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MONTANA LEGISLATIVE HISTORY

Chapter 484 Session L 1997
Bill House 343 Senate

History and final status sheet X
Introduced bill X
Fiscal note X
Third reading bill X
Final version of bill X

House Committee on Judiciary

Hearing date(s)* 1-31
2-6

Executive action (vote) date(s)* 2-6

Comm. Report 2-6

Floor 2nd reading & vote 2-11;4-9

Floor 3rd reading & vote 2-12;4-11

Senate Committee on Judiciary

Hearing date(s)* 3-10
3-11

Executive action (vote) date(s)* 3-11

Comm. Report 3-11

Floor 2nd reading & vote 3-14

Floor 3rd reading & vote 3-15

Conference or Free Conference Comm. ____ Yes X No

Hearing date(s)* _____

Executive action (vote) date(s)* _____

* Includes minutes, exhibits, roll call, visitors register, and vote sheet if available.

Did this bill originate in an interim committee? ____ Yes X No

Committee _____ Report _____

NOTES: Revise Laws Relating to Domestic Violence

State Law Library of Montana

Compiled by: rg

Date: 9-14-2016

HB 342 INTRODUCED BY BARNHART, ET AL. *LC1080 DRAFTER: MCCLURE*

ELIMINATE THE $10 PER OFFENSE MAXIMUM FINE LIMIT THAT THE BOARD OF REGENTS MAY ALLOW THE PRESIDENT OF EACH UNIVERSITY UNIT TO ASSESS FOR AN ON-CAMPUS MOTOR VEHICLE OR PARKING VIOLATION

1/23	INTRODUCED		
1/23	FIRST READING		
1/23	REFERRED TO JUDICIARY		
1/23	FISCAL NOTE REQUESTED		
1/28	FISCAL NOTE RECEIVED		
2/03	FISCAL NOTE PRINTED		
2/05	HEARING		
2/06	COMMITTEE REPORT—BILL PASSED		
2/07	2ND READING DO PASS MOTION FAILED	28	71

HB 343 INTRODUCED BY GRIMES, ET AL. *LC0609 DRAFTER: LANE*

REVISE THE LAWS RELATING TO DOMESTIC VIOLENCE

1/23	INTRODUCED		
1/23	FIRST READING		
1/23	REFERRED TO JUDICIARY		
1/23	FISCAL NOTE REQUESTED		
1/29	FISCAL NOTE RECEIVED		
1/30	FISCAL NOTE PRINTED		
1/31	HEARING		
2/07	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/11	2ND READING PASSED	71	27
2/12	3RD READING PASSED	75	24
	TRANSMITTED TO SENATE		
2/13	FIRST READING		
2/13	REFERRED TO JUDICIARY		
3/10	HEARING		
3/12	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/14	2ND READING CONCURRED	30	19
3/15	3RD READING CONCURRED	28	22
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	99	1
4/11	3RD READING CONCURRED AS AMENDED	77	19
4/19	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
5/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 484		
	EFFECTIVE DATE: 07/01/97		

HB 344 INTRODUCED BY PECK *LC0658 DRAFTER: MCCLURE*

REVISE THE PROCEDURES FOR UNIVERSITY SYSTEM LAND TRANSACTIONS

1/24	INTRODUCED		
1/24	FIRST READING		
1/24	REFERRED TO NATURAL RESOURCES		
1/24	FISCAL NOTE REQUESTED		
1/30	FISCAL NOTE RECEIVED		
1/30	FISCAL NOTE PRINTED		
1/31	HEARING		
2/06	COMMITTEE REPORT—BILL PASSED		
2/08	2ND READING PASSED	98	0
2/10	3RD READING PASSED	100	0

INTRODUCED BY [signature] House BILL NO. 343

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO DOMESTIC VIOLENCE; ELIMINATING FILING FEES FOR ORDERS OF PROTECTION; INCREASING CERTAIN FEES TO OFFSET THE ELIMINATION OF FEES; CREATING AN ACCOUNT TO HELP FUND DOMESTIC VIOLENCE SHELTERS AND CRISIS LINES; PROVIDING THAT IN PARTNER OR FAMILY MEMBER ASSAULT SITUATIONS A PEACE OFFICER MAY ARREST THE PRIMARY AGGRESSOR; PROVIDING THAT IN ANY ASSAULT AGAINST A PARTNER OR FAMILY MEMBER AN OFFENDER MUST GO TO JAIL WITHOUT BAIL; PROVIDING THAT IN A HEARING FOR AN ORDER OF PROTECTION THE VICTIM'S PAST SEXUAL HISTORY MAY NOT BE PLACED INTO EVIDENCE; PROVIDING A PRIVILEGE FOR A VICTIM OF PARTNER OR FAMILY MEMBER ASSAULT FROM DISCLOSURE OF DISCUSSIONS WITH SHELTER WORKERS AND VOLUNTEERS; CLARIFYING THAT A CONVICTION UNDER THE FORMER DOMESTIC ABUSE STATUTE IS A CONVICTION UNDER THE CURRENT PARTNER OR FAMILY MEMBER ASSAULT STATUTE; AMENDING SECTIONS 25-1-201, 25-31-112, 40-15-201, 40-15-202, 40-15-302, 45-5-206, 46-6-311, AND 46-9-302, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-1-201, MCA, is amended to read:

"**25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, for a temporary order of protection, or for an order of protection, from the plaintiff or petitioner, $80; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, a fee of ~~$120~~ $150; and for filing a petition for legal separation, a fee of ~~$120~~ $150;

(b) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five pages of each file, per request, and 25 cents per additional page;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100.

(2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $14 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the fee for filing a petition for dissolution of marriage or legal separation, $40 must be deposited in the state general fund, $35 must be remitted to the state to be deposited as provided in 19-5-404, $5 must be deposited in the children's trust fund account established by 41-3-702, $30 must be deposited in the partner and family member assault intervention and treatment fund established by [section 11], and $20 must be deposited in and credited to the district court fund. If no district court fund exists, the $20 must be deposited in the general fund for district court operations.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), $35;

(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), $25;

(iii) on the entry of judgment as provided in subsection (1)(c), $15; and

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be remitted to the state to be deposited as provided in 19-5-404.

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund $20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries.

(9) There is no fee for filing a petition for a temporary order of protection or for an order of protection under Title 40, chapter 15."

Section 2. Section 25-31-112, MCA, is amended to read:

"**25-31-112. Fees.** (1) The following is the schedule of fees ~~which~~ that, except as provided in 25-35-605, ~~shall~~ must be paid in every civil action in a justice's court:

~~(1)~~(a) ~~$25~~ except as provided in subsection (2), $26 when complaint is filed, to be paid by the plaintiff;

~~(2)~~(b) $10 when the defendant appears, to be paid by the defendant;

~~(3)~~(c) $10 to be paid by the prevailing party when judgment is rendered. In cases ~~where~~ in which

judgment is entered by default, no charge except the $25 for the filing of the complaint ~~shall~~ must be made for any services, including issuing and return of execution.

~~(4)~~(d) $10 for all services in an action ~~where~~ in which judgment is rendered by confession;

~~(5)~~(e) $10 for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate.

(2) There is no fee for filing a petition for a temporary order of protection or for an order of protection under Title 40, chapter 15."

NEW SECTION. **Section 3. Temporary order or temporary injunction -- continuing effect.** A temporary order or temporary injunction issued under 40-4-121 before October 1, 1995, continues in full force and effect as provided in the order or injunction.

Section 4. Section 40-15-201, MCA, is amended to read:

"40-15-201. Temporary order of protection. (1) A petitioner may seek a temporary order of protection from a court listed in 40-15-301. The petitioner shall file a sworn petition that states that the petitioner is in reasonable apprehension of bodily injury or is a victim of one of the offenses listed in 40-15-102, has a relationship to the respondent if required by 40-15-102, and is in danger of harm if the court does not issue a temporary order of protection immediately.

(2) Upon a review of the petition and a finding that the petitioner is in danger of harm if the court does not act immediately, the court shall issue a temporary order of protection that grants the petitioner appropriate relief. The temporary order of protection may include any or all of the following orders:

(a) prohibiting the respondent from threatening to commit or committing acts of violence against the petitioner and any designated family member;

(b) prohibiting the respondent from harassing, annoying, disturbing the peace of, telephoning, contacting, or otherwise communicating, directly or indirectly, with the petitioner, any named family member, any other victim of this offense, or a witness to the offense;

(c) prohibiting the respondent from removing a child from the jurisdiction of the court;

(d) directing the respondent to stay 1,500 feet or other appropriate distance away from the petitioner, the petitioner's residence, the school or place of employment of the petitioner, or any specified place frequented by the petitioner and by any other designated family or household member;

(e) removing and excluding the respondent from the residence of the petitioner, regardless of ownership of the residence;

(f) prohibiting the respondent from possessing or using the firearm used in the assault;

(g) prohibiting the respondent from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring the respondent to notify the petitioner, through the court, of any proposed extraordinary expenditures made after the order is issued;

(h) directing the transfer of possession and use of the residence, an automobile, and other essential personal property, regardless of ownership of the residence, automobile, or essential personal property, and directing an appropriate law enforcement officer to accompany the petitioner to the residence to ensure that the petitioner safely obtains possession of the residence, automobile, or other essential personal property or to supervise the petitioner's or respondent's removal of essential personal property;

(i) directing the respondent to complete violence counseling, which may include alcohol or chemical dependency counseling or treatment, if appropriate;

(j) directing other relief considered necessary to provide for the safety and welfare of the petitioner or other designated family member.

(3) If the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld, except by order of the court for good cause shown.

(4) The court may, without requiring prior notice to the respondent, issue an immediate temporary order of protection for up to 20 days if the court finds, on the basis of the petitioner's sworn petition or other evidence, that harm may result to the petitioner if an order is not issued before the 20-day period for responding has elapsed.

(5) There is no fee for filing a petition for a temporary order of protection or for an order of protection."

Section 5. Section 40-15-202, MCA, is amended to read:

"**40-15-202. Order of protection -- hearing -- evidence.** (1) A hearing must be conducted within 20 days from the date the court issues a temporary order of protection. At the hearing, the court shall determine whether good cause exists for the temporary order of protection to be continued, amended, or made permanent.

(2) The respondent may request an emergency hearing before the end of the 20-day period by filing an affidavit that demonstrates that the respondent has an urgent need for the emergency hearing. An emergency hearing must be set within 3 working days of the filing of the affidavit.

(3) The order of protection may not be made mutually effective by the court. The respondent may obtain an order of protection from the petitioner only by filing an application for an order of protection and following the procedure described in this chapter.

(4) (a) Except as provided in subsection (4)(b), evidence concerning a victim's sexual conduct is not admissible in a hearing under this section.

(b) Evidence of a victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease may be admitted in a hearing under this section only if that sexual conduct is at issue in the hearing.

(5) If a respondent proposes to offer evidence subject to subsection (4)(b), the trial judge shall order a separate hearing to determine whether the proposed evidence is admissible under subsection (4)(b)."

Section 6. Section 40-15-302, MCA, is amended to read:

"**40-15-302. Appeal to district court -- order to remain in effect.** (1) An order issued by a justice's court, municipal court, or city court pursuant to 40-15-201 is immediately reviewable by the district judge upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a justice's court, municipal court, or city court made pursuant to 40-15-201 or 40-15-204.

(2) A case in which an order has been issued by a justice's court, municipal court, or city court pursuant to 40-15-201 or 40-15-204 may be removed to district court upon filing of a notice of removal.

(3) If a temporary order of protection or an order of protection issued by a court of limited jurisdiction is appealed or removed to an appellate court, the order continues in full force and effect unless modified by the appellate court."

Section 7. Section 45-5-206, MCA, is amended to read:

"**45-5-206. Partner or family member assault -- penalty.** (1) A person commits the offense of partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a partner or family member;

(b) negligently causes bodily injury to a partner or family member with a weapon; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

(2) For the purposes of Title 40, chapter 15, 46-6-311, and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) (a) An offender convicted of partner or family member assault shall be fined an amount not less than $100 or more than $1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense. An offender convicted of a second offense under this section shall be fined not less than $300 or more than $1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year. Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005. On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than $500 and not more than $50,000 and be imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(b) For the purpose of determining the number of convictions under this section, a conviction means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated. A prior conviction for domestic abuse under this section is a prior conviction for purposes of subsection (3)(a).

(4) (a) An offender convicted of partner or family member assault ~~shall~~ must be required to pay for

and complete a counseling assessment with a focus on violence, dangerousness, and chemical dependency. The offender shall follow through on all recommendations made by the counseling provider. The ~~counselor~~ counseling provider must be approved by the court. The counseling must include a counseling assessment and a minimum of 25 hours of counseling, in addition to the assessment. The assessment and the counseling must be:

(i) with a person licensed under Title 37, chapter 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent conduct of the offender.

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender ~~shall~~ must be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) At the time of sentencing, the court shall provide an offender a written copy of the offender's sentence."

Section 8. Section 46-6-311, MCA, is amended to read:

"**46-6-311. Basis for arrest without warrant -- arrest of primary aggressor.** (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) (a) The summoning of a peace officer to a place of residence by a partner or family member

constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.

(b) If a peace officer receives a complaint of violence or threat of violence from more than one person who is a family member or partner, the officer shall evaluate the complaints separately to determine who is the primary aggressor. If, based on the officer's evaluation, the officer determines that one person is the primary aggressor, the officer may arrest only the primary aggressor. A determination of who the primary aggressor is must be based on but is not limited to the following considerations, regardless of who was the first aggressor:

(i) the prior history of violence between the partners or family members, if information about the prior history is available to the officer;

(ii) the relative severity of injuries received by each person;

(iii) whether an act of or threat of violence was taken in self-defense;

(iv) the relative sizes and apparent strength of each person;

(v) the apparent fear or lack of fear between the partners or family members; and

(vi) statements made by witnesses."

Section 9. Section 46-9-302, MCA, is amended to read:

"**46-9-302. Bail schedule -- acceptance by peace officer.** (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is any assault on a partner or family member ~~assault~~, as partner or family member is defined in 45-5-206, or stalking, as defined in 45-5-220.

(2) A peace officer may accept bail on behalf of a judge:

(a) in accordance with the bail schedule established under subsection (1); or

(b) whenever the warrant of arrest specifies the amount of bail.

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered."

NEW SECTION. **Section 10. Advocate privilege.** (1) Unless a report is otherwise required by law,

an advocate may not, without consent of the victim, be examined as to any communication made to the advocate by a victim and may not divulge records kept during the course of providing shelter, counseling, or crisis intervention services.

(2) This privilege belongs to the victim and may not be waived, except by express consent. The privilege continues even if the victim is unreachable. Consent may not be implied because the victim is a party to a divorce or custody proceeding. The privilege terminates upon the death of the victim.

(3) For purposes of this section, the following definitions apply:

(a) "Advocate" means an employee or volunteer of a domestic violence shelter, crisis line, or victim's services provider that provides services for victims of sexual assault, stalking, or any assault on a partner or family member.

(b) "Victim" means a person seeking assistance because of partner or family member assault, any sexual assault, or stalking, whether or not the victim seeks or receives services within the criminal justice system.

NEW SECTION. **Section 11. Partner and family member assault intervention and treatment fund account.** (1) There is a partner and family member assault intervention and treatment fund account in the state special revenue fund in the state treasury. The money in the account is allocated to the department of public health and human services to fund services to victims of partner or family member assault, as provided in subsections (2) and (3).

(2) The department shall distribute the money in the account, as provided in subsection (3), to agencies that provide direct services to victims of partner or family member assault, including but not limited to shelters, crisis lines, safe homes, and victim's counseling providers. A service provider is eligible to receive money under this section for services provided to a victim of partner or family member assault, whether or not the victim seeks or receives services within the criminal justice system.

(3) A service provider that provides direct services to victims of partner or family member assault shall apply to the department for distribution of money under this section. The department shall evaluate a provider's eligibility to receive money under this section based on available money, the needs of the provider, whether the provider includes programs focused on prevention of partner and family member assault, the quality of services provided by the provider, the need for services in the community, and the need for improved or continuing services in the community.

NEW SECTION. **Section 12. Codification instruction.** (1) [Section 10] is intended to be codified as an integral part of Title 26, chapter 1, part 8, and the provisions of Title 26, chapter 1, part 8, apply to [section 10].

(2) [Section 11] is intended to be codified as an integral part of Title 40, chapter 15, part 1, and the provisions of Title 40, chapter 15, part 1, apply to [section 11].

NEW SECTION. **Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 14. Retroactive applicability.** [Section 3] applies retroactively to October 1, 1995.

NEW SECTION. **Section 15. Effective date.** [This act] is effective July 1, 1997.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0343, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising domestic abuse laws; increasing the divorce filing and legal separation fees; creating a state special revenue account to help fund domestic violence shelters and crisis lines; and directing the Department of Public Health and Human Services to distribute funds in the state special revenue account to agencies that provide direct services to victims of domestic violence.

ASSUMPTIONS:
1. Current law collects $120 for dissolution of a marriage or for filing a petition for legal separation.
2. This proposal would increase the filing fee for marriage dissolution or petition for legal separation to $150.
3. The additional $30 in the fee would be deposited in a special revenue fund account and allocated to the Department of Public Health and Human Services (DPHHS) for intervention and treatment services to victims of partner or family member assault.
4. DPHHS will distribute the money in the special revenue account to agencies that provide direct services to victims of partner or family member assault.
5. In fiscal 1997, DPHHS contracted with 20 domestic violence service providers at an annual average cost of $16,000 per provider.
6. The average number of divorces is 4,220 per year, based on calendar years 1989 through 1995.
7. The $30 increase in the dissolution of marriage and legal separation fees will result in $126,600 additional annual state special revenue.

FISCAL IMPACT:

	FY98 Difference	FY99 Difference
Expenditures:		
Benefits	$126,600	$126,600
Funding:		
State Special Revenue (02)	$126,600	$126,600
Revenues:		
Increased Fee Revenue (02)	$126,600	$126,600
Net Impact on Fund Balance: (Revenues minus expenditures)		
State Special Revenue (02)	$0	$0

(Continued)

Dave Lewis 1-29-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

DUANE GRIMES, PRIMARY SPONSOR DATE

Fiscal Note for HB0343, as introduced

HB 343

DEDICATION OF REVENUE:

a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (Please explain)

Persons filing for divorce who are not victims of domestic violence would not benefit from this dedicated revenue. Conversely, victims of domestic violence who remain married may benefit from this revenue without contributing.

b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

Use of a state special revenue account could ensure that the increase in divorce filing fees is used to support domestic violence programs. If the revenue is deposited to the general fund, the increase in divorce fees could be appropriated for programs other than domestic violence.

c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended? ____ Yes ____ No (if no, explain)

To the extent that divorces may result due to domestic violence, the source of revenue is relevant to the use of funds.

d) Does the need for this state special revenue provision still exist? ____ Yes ____ No (Explain)

This bill would create a new account.

e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)

All state revenue accounts may affect the legislature and executive's ability to scrutinize budgets, control expenditures, and establish priorities for state spending.

f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please explain)

g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

No impact.

HOUSE JUDICIARY

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0323	BOHARSKI, WILLIAM	PROHIBIT SAME-SEX MARRIAGES				
	1/22	2/13		DO PASS 02/19 VOTE: 15-5		2/19
HB0325	BRAINARD, MATT	AMEND CONST. TO MANDATE GRAND JURY IF PEOPLE PETITION FOR ONE				
	1/23	2/07		DO PASS 02/13 VOTE: 10-3		2/14
HB0337	BOHLINGER, JOHN	IMMUNITY FOR DENTISTS WHO PROVIDE CHARITABLE SERVICES				
	1/23	2/06		PASS AS AMENDED 02/12 VOTE: 19-0		2/13
HB0339	CAREY, BILL	CHANGE PENALTY FOR ONE UNDER 21 WHO FAILS DUI TEST				
	1/23	2/04		PASS AS AMENDED 02/04 VOTE: 15-0		2/05
HB0342	BARNHART, BEVERLY	ELIMINATE $10 MAXIMUM LIMIT FOR ON-CAMPUS VEHICLE AND PARKING VIOLATIONS				
	1/23	2/05		DO PASS 02/05 VOTE: 18-2		2/06
HB0343	GRIMES, DUANE	REVISE DOMESTIC VIOLENCE LAWS				
	1/23	1/31		PASS AS AMENDED 02/06 VOTE: 16-2		2/07
HB0346	TROPILA, JOE	GENERALLY REVISING LAWS RELATING TO MANDATORY MOTOR VEHICLE INSURANCE				
	1/24	2/05		TABLED ON 02/12 VOTE: 19-0		
HB0352	SLITER, PAUL	IMMUNIZE OWNER OF STOLEN PROPERTY FROM LIABLE LATER OCCURRING				
	1/25	1/30		PASS AS AMENDED 02/12 VOTE: 11-7		2/13
HB0365	MCGEE, DANIEL	CREATE OFFENSE OF CAUSING PARTIAL-BIRTH ABORTIONS				
	1/27	2/12		DO PASS 02/18 VOTE: 12-8		2/18
HB0389	SIMON, BRUCE	STRENGTHEN THE REQUIREMENTS FOR AN EMERGENCY STATE AGENCY RULE				
	1/29	2/11		TABLED ON 02/11 VOTE: 16-4		
HB0396	GRIMES, DUANE	PLACE PODIATRY IN MEDICAL LEGAL PANEL ACT				
	1/30	2/12		DO PASS 02/12 VOTE: 16-0		2/13
HB0401	BARNETT, JOE	REVISE LAWS GOVERNING BAIL				
	1/30	2/11		PASS AS AMENDED 02/11 VOTE: 20-0		2/12

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on January 31, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 276 & HB 268 - POSTED 1/21/97; HB 343 - POSTED 1/27/97

HEARING ON HB 276

Opening Statement by Sponsor: **REP. DEB KOTTEL**
{Tape: 1; Side: A; Approx. Time Count: 0.1}

Proponents' Testimony:

LYNETTE LEE **EXHIBIT 1**
{Tape: 1; Side: A; Approx. Time Count: 8.6}

HEARING ON HB 343

Opening Statement by Sponsor: REP. DUANE GRIMES EXHIBITS 3 & 4
{Tape: 2; Side: A; Approx.Time Count: 40.4 - Tape 2; Side B; 6.3}

Proponents' Testimony:

JUDY WANG, Missoula City Attorney EXHIBIT 5
{Tape: 2; Side: B; Approx. Time Count: 6.4}

FRED UNMACK, Dawson County Attorney's Office
{Tape: 2; Side: B; Approx. Time Count: 15.5}

BETH BAKER, Department of Justice EXHIBIT 6
{Tape: 2; Side: B; Approx. Time Count: 16.3}

ROBERT HEINLE, Missoula Police EXHIBIT 7
{Tape: 2; Side: B; Approx. Time Count: 18.4}

KELLY SLATTERY-SEWELL, YWCA EXHIBITS 8, 8A
{Tape: 2; Side: B; Approx. Time Count: 20.9}

KAREN ORZECH, Crime Victim Advocate EXHIBIT 9
{Tape: 2; Side: B; Approx. Time Count: 23.3}

KATHY SEWELL, Montana Coalition EXHIBIT 10
{Tape: 2; Side: B; Approx. Time Count: 26.6; Comments: Exhibit 10 is a letter read by this witness on behalf of by Janet Cahill.}

MATTHEW DALE, Director, Friendship Center EXHIBIT 11
{Tape: 2; Side: B; Approx. Time Count: 29.1}

MOLLY COGSWELL-KELLEY, YWCA
{Tape: 2; Side: B; Approx. Time Count: 31.8}

KATE CHOLEWA, Montana Women's Lobby
{Tape: 2; Side: B; Approx. Time Count: 32.4}

FRED UNMACK, Montana County Attorney's Association
{Tape: 2; Side: B; Approx. Time Count: 32.6; Comments: Fred Unmack spoke on behalf of John Connor in support of HB 343.}

DIANE KEEFAUVER COLLIER, Missoula City Attorney, Women's Caucus
{Tape: 2; Side: B; Approx. Time Count: 33.0}

Informational Testimony:

REP. BRAD MOLNAR
{Tape: 2; Side: B; Approx. Time Count: 34.0}

Questions From Committee Members and Responses:
{Tape: 2; Side: B; Approx. Time Count: 37.8-Tape 3; Side A; 29.6}

Closing by Sponsor: **REP. GRIMES**
{Tape: 3; Side: A; Approx. Time Count: 29.7}

EXHIBIT 12
{Comments: Exhibit 12 was given to the committee following the hearing.}

Motion/Vote: **REP. MC GEE moved to adjourn.** The motion carried by unanimous voice vote.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 1/31/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS 9 AM	✓		✓
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

EXHIBIT 3
DATE 1/31/97
HB 343

Exhibit # 3 - Section B of Missoulian 1-29-97
The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P.O. Box 201201
Helena, MT. 59602-1201
Phone: (406) 444-4775

f Ed

move Bozem

nce, the matter is closed.
etailed accounts of abuse:
dent's head in the urinal
ntsman III of Corvallis, Ore.
occasion. Casey was not
entally as well."
oden paddle about 4 feet
hout its length, which he
ite occasions," wrote Craig

ent against a wall to get a
cklenburg of Bozeman.
nts from me," he said. "Mr.
d enough to cause the

merson has no business
egislators should hold a
the allegations and his
mmittee.
ay in a letter to Jeffrey
the effort against

Emerson

Committee on Committees to remove Sen. Emerson from the Education Committee ... until allegations are proven and on record," Aklestad told Langan.

Terri Sullivan of Bozeman recently told legislators in a letter that she was pushed down a school staircase by Emerson in the late 1960s. Emerson said Sullivan was lying.

Sullivan said this week that news coverage of her remarks and Emerson's response brought many calls from former students claiming abuse.

In telephone interviews Tuesday, some other former

See **EMERSON,** *Page B2*

scooting

Missoula man charged with partner assault

By MICHAEL MOORE
of the Missoulian

The pieces of paper known as temporary orders of protection represent the idea of protection, but they won't stop a fist.

Just ask Clayton Reid. He spent the night at his girlfriend's house Monday, and awakened shortly before 3 a.m. Tuesday to find his companion's ex-boyfriend in the bedroom.

Justin D. Reese was prohibited by court order from being within 1,500 feet of Jennifer Hickenbottom, but the order didn't stop Reese from using the key he had to Hickenbottom's house. And according to court records, it didn't stop him from pummeling Reid.

According to law enforcement reports, Reese had seen Reid's car at Hickenbottom's home. Court records allege that Reese went into the house and began hitting Reid in the face. Reid suffered a broken jaw and cheekbone.

After forcing Reid to leave, Reese allegedly shoved Hickenbottom in the back and told her was going to get a gun and come back and kill her. Missoula County sheriff's deputies arrested Reese at his south-side home without incident.

Temporary orders of protection won't stop a bullet or fist, but they do give law enforcement officers information to go on when they're called to a domestic-abuse incident, according to Karen Orzech, the city-county crime victims' advocate. Domestic violence cases are some of the most dangerous incidents investigated by

EXHIBIT 4
DATE 1/31/97
HB 343

Amendments to House Bill No. 343
First Reading Copy (white)

Requested by Representative Grimes
For the Committee on Judiciary

Prepared by Valencia Lane
January 27, 1997

1. Title, line 5.
Following: "VIOLENCE;"
Strike: "ELIMINATING FILING FEES FOR ORDERS OF PROTECTION;"
Following: "CERTAIN"
Insert: "FILING"

2. Title, lines 5 and 6.
Following: second "FEES" on line 5
Strike: remainder of line 5 through "FEES" on line 6

3. Title, line 15.
Strike: "25-31-112, 40-15-201,"

4. Page 1, line 24.
Following: "marriage"
Strike: ", for a temporary order of protection, or for an order of protection"

5. Page 2, line 29.
Strike: "11"
Insert: "9"

6. Page 3, lines 21 and 22.
Strike: subsection (9) in its entirety

7. Page 3, line 24 through page 4, line 7.
Strike: section 2 in its entirety
Renumber: subsequent sections

8. Page 4, line 13 through page 5, line 24.
Strike: section 4 in its entirety
Renumber: subsequent sections

9. Page 11, lines 1 and 3.
Strike: "10"
Insert: "8"

10. Page 11, lines 4 and 5.
Strike: "11"
Insert: "9"

11. Page 11, line 12.
Strike: "3"
Insert: "2"

EXHIBIT 5
DATE 1/31/97
HB 343

To: Honorable Chairman Bob Clark and Members of the House Judiciary Committee
From: Judy Wang, Assistant City Attorney for Missoula
Dated: January 31, 1997
Re: **House Bill 343**

Exhibit #5 - 6 pages written support / 5 pages w/signatures
The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P.O. Box 201201
Helena, MT. 59602-1201
Phone: (406) 444-4775

Primary Aggressor § 4

As Montana law is presently written, peace officers ma
complaints of mutual aggression when they respond to
that were recently received by the City of Missoula, a
calls were handled differently. All three calls involved
the male party was the more significant aggressor. In
significant aggressor. In one call, no one was arrested.
In one call both were arrested. This amendment wo
violence investigation when there are allegations of m

Under the proposal, officers shall evaluate a domestic v
of mutual violence and determine who is the primary
primary aggressor only. The amended statute gives officers the tools to make this decision. This proposal was drafted by a committee of people including several sheriff's deputies and city police officers.

Victim Advocate Privilege § 8

When a victim calls for help from a shelter or crisis line the victim should have a privilege in what the victim tells the advocate or crisis line worker. Under current Montana law shelter and crisis line workers can have their records subpoenaed, be subpoenaed themselves and may be required to tell the offenders divorce lawyer or a court what the victim said. This section gives the victim a privilege in those conversations. If the victim dies, the privilege dies with the victim.

Rape Victims Privacy Rights at TOP Hearings § 40-15-202

Under current Montana law, a rape victim can obtain a Temporary Order of Protection from the rapist. Under current law, the rapist has no limits on his ability to bring up information about the victim's sexual conduct at the hearing on the Order of Protection. This section incorporates Montana's rape shield laws into the Order of Protection statutes. Information about the victims sexual conduct, other than what is at issue in the hearing, cannot be presented unless the judge reviews the proposed information before the hearing and judge rules that it is admissible.

Shelter Funding § 25-1-201 and § 9

Domestic Violence Shelters and Crisis lines in Montana have very limited funding. This proposal adds an additional $30 fee on divorce filings with the funding to be distributed by

EXHIBIT 6
DATE 1/31/97
HB 343

PRIMARY AGGRESSOR

In recent years, there has been an emphasis on the determination of the ***primary aggressor*** in domestic violence incidents. The primary aggressor is the most significant aggressor, and not necessarily the initial participant in the incident.

The identification of the primary aggressor is used to reduce the number of dual arrests when there appears to be two suspects and to avoid arresting the victims of domestic violence. Dual or mutual arrest occurs when more than one party is arrested.

It is currently believed that mutual arrests undermine the intent of domestic violence statutes, makes prosecution more difficult, and increases the likelihood that the case will be dismissed.

Some states have enacted statutes requiring officers to investigate, determine, and arrest only the primary aggressor. At the present time, Montana has no state law requiring that a primary aggressor be determined. While mutual arrests are not prohibited, and may be necessary in some cases, the responding officer(s) should make an attempt to investigate, identify, and arrest only the primary aggressor in Partner Or Family Member Assault.

In attempting to identify the primary aggressor, in what appears to be a mutual combat situation, law enforcement officers should consider the following:

PRIOR COMPLAINTS/HISTORY OF DOMESTIC VIOLENCE

- Officers can consider their own personal knowledge or experience of the history of abuse involving the same victim/suspect.
- Record of any prior incidents (such as prior arrests,etc.)
- Record of any temporary orders of protection or orders of protection on file.
- A history of abuse related by one or both parties, including any prior orders of protection.
- Medical documentation of past injuries due to abuse.
- Other witnesses confirm a past history of abuse (such as children, friends, neighbors, etc.).
- Violence in another relationship or other violent acts in general.

THE RELATIVE SEVERITY OF INJURIES

- Compare the extent of injuries on the involved parties including complaints of pain.

- What is the proportional nature of the mutual injuries?
  - A scratch vs. a broken arm
  - A push vs. a black eye
  - verbal abuse vs. threats and physical abuse

NOTE- Officers should be aware that there may be non-visible injuries from kicks/punches etc. which have not resulted in bruising at the scene.

SERIOUS THREATS CREATING FEAR OF PHYSICAL INJURY

- One party shows signs they are in fear of the other while the other party shows a lack of fear.

- Consider the demeanor of the parties:
  - Evidence of fear
    - -Crying
    - -Hysterical
    - -Nervous
    - -Disoriented/Confused
    - -Apologetic
  - Evidence of lack of fear
    - -Calm
    - -Threatening
    - -Controlling

NOTE- Officers should keep in mind that in some cases, a victim's reactions may be affected by the presence of law enforcement on the scene. Once officers arrive on the scene, some victims may feel they have protection and will take the opportunity to lash out at the suspect. It may appear initially that the victim who may be hysterical, is the suspect, while the suspect, who may appear calm, is the victim. The officers arrival on the scene may shift the victim's priorities from one of fear of assault and concern for their personal safety, to other concerns such as retaliation, children, etc.

THE LIKELIHOOD OF FUTURE INJURY TO EACH PERSON

- The size relationship between the parties.

- The prior history of abuse between the parties.

- Threats of future violence made by one party against the other.

DID ONE PARTY ACT IN SELF DEFENSE

- Do the injuries appear to be obtained in defense against the other party?

- Are the injuries consistent with the person's statements and the evidence at the scene?

- offensive vs. defensive wounds
  The following injuries are common in self defense cases and should warrant further investigation:
  - Bite marks on the chest, biceps and forearms.
  - Scratches on the face, chest or neck.
    (Women often use their fingernails as weapons in defending themselves)

- Refer to MCA 45-3-102 and MCA 45-3-105
  Self defense should be considered when a person uses force against another when he/she reasonably believes that it was necessary for defense against another's imminent use of unlawful force.

45-3-102. **USE OF FORCE IN DEFENSE OF PERSON.** A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or serious bodily harm to himself or another or to prevent imminent death or serious bodily harm to himself or another or to prevent the commission of a forcible felony.

45-3-105. **USE OF FORCE BY AGGRESSOR.** The justification described in 45-3-102 through 45-3-104 is not available to a person who:

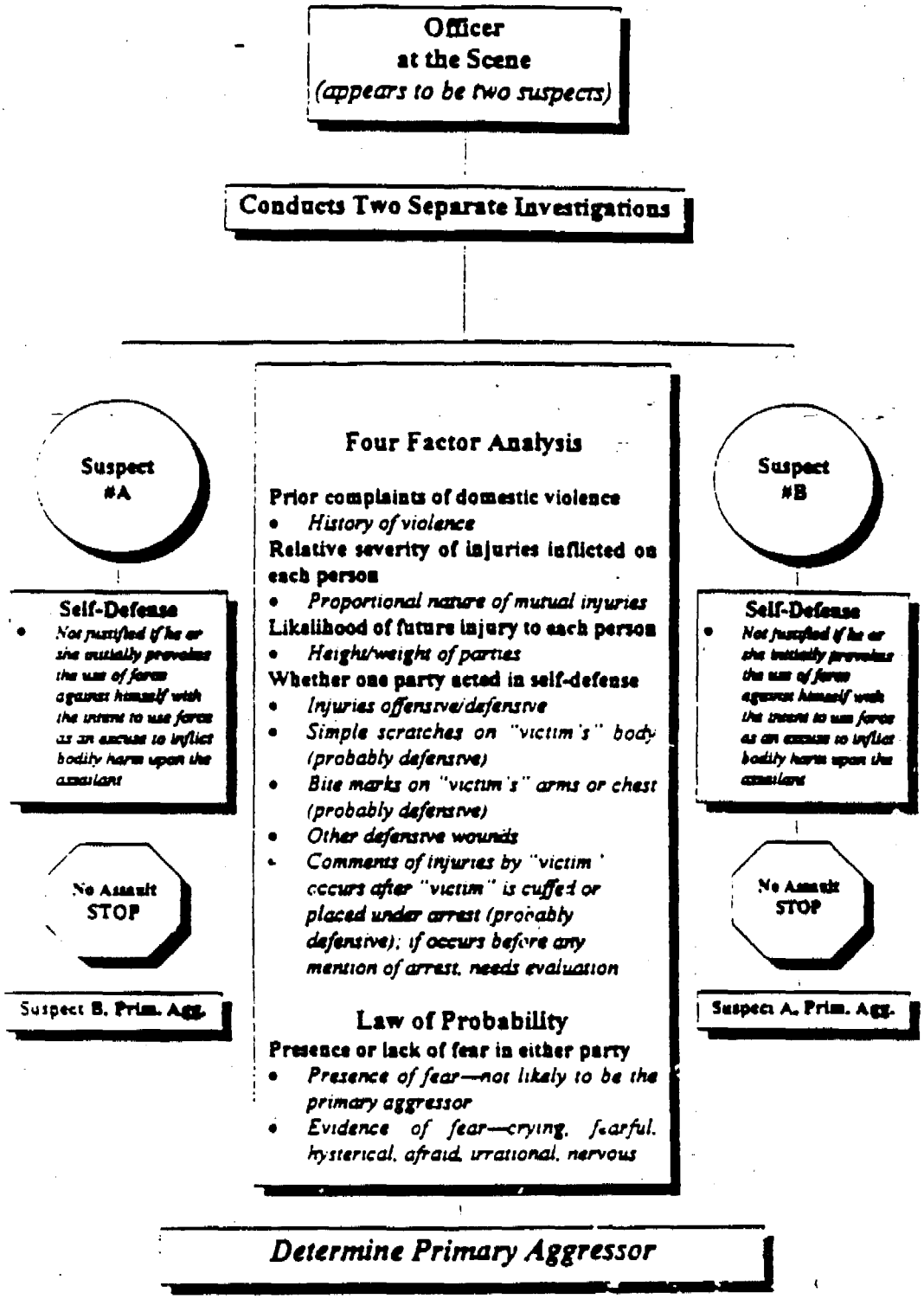
(1) is attempting to commit, committing, or escaping after the commission of a forcible felony; or

(2) purposely or knowingly provokes the use of force against himself, unless:

(a) such force is so great that he reasonably believes that he is in imminent danger of death or serious bodily harm and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or serious bodily harm to the assailant; or

(b) in good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force but the assailant continues or resumes the use of force.

PRIMARY AGGRESSOR ANALYSIS


Officer
at the Scene
(appears to be two suspects)
Conducts Two Separate Investigations
Suspect
#A
Suspect
#B
Four Factor Analysis
Prior complaints of domestic violence
• History of violence
Relative severity of injuries inflicted on each person
• Proportional nature of mutual injuries
Likelihood of future injury to each person
• Height/weight of parties
Whether one party acted in self-defense
• Injuries offensive/defensive
• Simple scratches on "victim's" body (probably defensive)
• Bite marks on "victim's" arms or chest (probably defensive)
• Other defensive wounds
• Comments of injuries by "victim" occurs after "victim" is cuffed or placed under arrest (probably defensive); if occurs before any mention of arrest, needs evaluation
Law of Probability
Presence or lack of fear in either party
• Presence of fear—not likely to be the primary aggressor
• Evidence of fear—crying, fearful, hysterical, afraid, irrational, nervous
Self-Defense
• Not justified if he or she initially provokes the use of force against himself with the intent to use force as an excuse to inflict bodily harm upon the assailant
Self-Defense
• Not justified if he or she initially provokes the use of force against himself with the intent to use force as an excuse to inflict bodily harm upon the assailant
No Assault
STOP
No Assault
STOP
Suspect B. Prim. Agg.
Suspect A. Prim. Agg.
Determine Primary Aggressor

Adopted from "Domestic Violence 101", Utah Prosecution Council, Salt Lake City, Utah, July 1, 1996.

EXHIBIT 7
DATE 1/31/97
HB 343

CITY OF MISSOULA
POLICE DEPARTMENT

"Professionalism With Pride"

DATE: 01-31-97

To: Honorable Chairman Bob Clark and Members of the House Judiciary Committee

Thank you for your time and consideration on this Bill. I am speaking in support of House Bill 343. More specifically, I am speaking in support of the language in regards to the "Primary Aggressor".

I have been a police officer for the City of Missoula for 6 years. I have worked as a patrol officer for the entire time. In this time, I have investigated numerous partner assault cases. In all of these cases, I have identified and arrested the primary aggressor (based on the appropriate probable cause). Because family violence is a unique problem with its own special dynamics, it is sometimes very difficult to determine who is the primary aggressor. However, when the evidence is available to make the determination, it would be very advantageous to have primary aggressor language in the law to facilitate officer's decisions and actions.

Because of the dynamics of family violence, sometimes the first aggressor may not be the primary aggressor. The abused may be doing what ever they need to do to survive, this may even include being the first one to resort to physical contact. Even in my department, where we are very pro-active towards family violence, there are times when arrests are not made, or are incorrectly made because officers are unsure of the interpretation of the law. By having the primary aggressor defined as part of the partner assault statute, you would be giving me and my fellow officers another tool to use in making these very difficult decisions. In areas where departments are not as pro-active, you may be providing them with the added criteria to act accordingly. You would also be giving us support of our decisions later on in trial. Even more important, you will be protecting those who need our protection the most, the victims.

To summarize, the wording of "primary aggressor" is already part of our investigations. However, it is not specially addressed in the law and this has led to mistakes in the investigations and subsequent arrests by officers in the area of partner assault. This leads to the victim being victimized yet again by the system.

Sincerely,

Robert J. Heinle
Patrol Officer City of Missoula

435 RYMAN
PHONE (406) 523-4777

MISSOULA, MT 59802-4297
FAX (406)728-6690

EXHIBIT 8
DATE 1/31/97
HB 343

YWCA

1130 West Broadway
Missoula, MT 59802
Phone: (406) 543-6691
FAX: (406) 543-6777

January 30, 1997

Honorable Chairman Clark and esteemed members of the House Judiciary Committee,

I am the Co-Coordinator of the YWCA Pathways program in Missoula, and write with eight years of D.V. experience. The numbers I share with you today are those of Missoula, but as past Co-Chair A of the Montana Coalition Against Domestic and Sexual Violence this story is repeated across the state.

Envision with me please the following: You are in charge of a household where as many as 250 residents will walk through your doors and stay more than 3500 days. You need to be able to provide food and clothing to these residents as many walk through the doors with just the clothes on their back. Then you need to make sure you have enough toilet paper, paper towels, laundry soap and various other sundry items to keep the house up and running. You have women who need to talk, and children who need to be held and told what has happened was not their fault. You need staff, trained advocates, children's advocates, night staff so that the house stays safe and supportive.

Then you have a 24 hour, 365-day crisis line, because as much as we would like domestic violence to take a break on the Holiday's it does not, so the doors stay open. On top of the 250 women and children you serve in the shelter another 600 victims, family and friends, call on the phone. They need an ear to hear them, they need education, they need to know that there is some place to go. Add support groups, educational presentations, fundraising and the overall paperwork it takes to run a 24-hour operation as well as that many of your Montana D.V. lines are also sexual assault lines and you have a glimpse of what it is like for shelter and safe home programs all over the state.

It is not unusual for programs to run with only 1 staff person and a handful of volunteers, 2 short years ago, Missoula had 2.5 staff people and 45 volunteers, and only until we assumed the services of another organization did our staff grow larger. And though 45 volunteers are wonderful it takes a part time person to keep volunteers trained, working shifts, and happy.

Many programs are understaffed and under funded. For example, we all know that to break the cycle of violence one needs to work with the children, but the Missoula shelter is the only shelter who can afford a specially trained children's advocate. As because of the expertise and hours needed to really work with children, the position is paid. If it was not for some special Missoula community support, we would not have this position.

Please support House Bill 343. We need to start to build a fund in Montana. A fund which supports our domestic and sexual violence programs whom every day, save lives and break the cycle of violence.

Sincerely,

Kelly Slattery-Robinson

Kelly Slattery-Robinson

EXHIBIT 8A
DATE 1/31/97
HB 343

Honorable Chairman Clark and esteemed members of the House Judiciary Committee,

Thank you for this opportunity to speak. I am Kelly Slattery-Robinson from the Pathways program in Missoula. I have worked with the Missoula program for eight years. The letter I have written addresses my concerns in regards to funding. Today I would like to express my support of the section on Advocate Privilege.

It is imperative in our work that victims feel safe, and have the knowledge that what is said to us, as Domestic and Sexual Violence workers is going to be kept confidential. Women enter our shelter doors, and call us on the phone because they believe what is being said will be kept confidential, and the majority of the time, that is so. But as a program whose records have been subpoened into court, I am asking for this extra layer of privilege. Many us, who work in this field do not hold counseling degrees, but many times the process of healing the victims go through while in group or at the shelter could easily be described as theraputic.

I also believe keeping records confidential is important for the safety of those who work in this field. For the majority of abusers, the target of violence is their partner, but there is a reason we keep the shelter location confidential and any extra safeguard, such as advocate privilege is very helpful. Plese support House Bill 343

MISSOULA COUNTY

Missoula County Victim Assistance Program
CRIME VICTIM ADVOCATE
200 W. Broadway St. • Missoula, MT 59802-4292

(406) 523-4630

EXHIBIT 9
DATE 1/31/97
HB 343

January 31, 1997

Honorable Chairman Bob Clark and Members of the House:

I am the Crime Victim Advocate for the City and County of Missoula and I am here to testify for House Bill 343. In a three month period I may see or speak to over 200 individuals; 80% or more are victims of a crime. Most of these crimes are of a violent personal nature, such as partner assault, rape, sexual assault or incest. I am here to talk about victims of sexual assault and rape.

Most sexual assault and rape victims I have seen are women. One of my duties is to help them obtain a Temporary Order of Protection, a civil court order which orders one person, a Respondent, to stay away from another, the Petitioner, who feels threatened by them. A victim first appears before the judge to explain why he or she is requesting the Temporary Order of Protection. She tells her story at this time. If the judge determines that the woman believes she is in danger from the person who sexually assaulted or raped her, the judge will grants the temporary order. Within twenty days a hearing is set to determine whether to continue the order or not.

These hearings are remarkable. Often the victim is terrified. A woman who has been sexually assaulted or raped is again victimized, only this time it is by the judicial system. In a criminal trial, ideally, the existing rape shield law will protect the victim by not allowing any testimony as to her past sexual behavior. In these civil cases, there is no rape shield law. Let us remember that at this hearing she is requesting an Order of Protection. The matter at hand is her current safety, not her past sexual behavior. We need to extend the rape shield law to include these civil cases.

Again, an Order of Protection simply orders a Respondent to stay away from the Petitioner, to not contact her, to not harass her, to stay away from her home and/or her work. A criminal trial may not occur for years, or possibly not occur at all. This civil order is a necessary protective effort by the courts addressing the safety and well-being of the victim. The rape shield law needs to cover these civil orders.

In this matter, we can all be Crime Victim Advocates, and vote to support HB 343. Thank you for your time and attention.

Sincerely yours,

Karen A. Orzech

EXHIBIT 10
DATE 1/31/97
HB 343

HB 343 Testimony

Chairman Representative Clarke, Members of the Committee, my name is Janet Cahill and I am the Legislative Committee Chair of the Montana Coalition Against Domestic and Sexual Violence. I am also the Director or the Violence Free Crisis Line/The Abbie shelter.

I have worked in programs that provide services to battered women and their children for over 15 years. In that time I have worked with thousands of battered women. In the majority of cases women victims of partner assault minimize their injuries and their experiences. Many of the women share with us how the injuries occurred and how they attempted to defend themselves. The actions of the perpetrators of this crime are chosen sometimes because they are not easily proven or detected. Choking is one of the types of behaviors used by abusers on their victims. It is also the most common kind of injury for battered women in which they are also arrested. It is human nature to defend yourself.

Imagine that you live in fear and that the person who loves you the most grips you around the throught. As your life's breath is cutoff, you don't think about the consequences of staying alive. You just respond!! Women are currently being arrested for having this human response.

This important change in the partner and family member assault law will prevent most of these arrests. It will give the necessary tools to law enforcement to be able to differentiate between aggression and self-defense.

I'd like to share with you how important the issue is by sharing with you how big the problem of domestic violence is in the state of Montana. More than 7,500 battered women and their children were served by the over 24 shelters and programs in this state. Nearly 18,000 nights of shelter were provided to these women and children desparately escaping the violence in their homes.
Many of these programs also work with men, women and children who have been sexually assaulted. It is crucial for them to feel safe and begin the healing process by being able to obtain and order of protection without being challenged and further victimized with evidence of their past sexual history being introduced. An order or protection is about getting safe, not the forum for introducing evidence about guilt or innocence. If this information is not able to be introduced into the criminal action, then it is logical that it remain out of this civil action. Victims have a very difficult time going on with their lives and in most cases, even when healing is reached, their lives remained damaged. Please protect them from this additional abuse.

On behalf of Montana Coalition Against Domestic and Sexual Violence and the women and children of Montana, I ask that you support the passage of this important bill.

my name is Kathleen Sewell. I am the Public Policy Mgr for the Coalition. Today I am reading written testimony on her behalf.

EXHIBIT 11
DATE 1/31/97
HB 343

GOOD MORNING

MY NAME IS MATTHEW DALE AND I AM THE EXECUTIVE DIRECTOR OF THE FRIENDSHIP CENTER OF HELENA. WE PROVIDE DOMESTIC VIOLENCE AND SEXUAL ASSAULT SERVICES TO RESIDENTS OF LEWIS & CLARK, JEFFERSON AND BROADWATER COUNTIES. I AM HERE TO SPEAK IN SUPPORT OF HOUSE BILL 343.

WHILE THERE ARE SEVERAL COMPONENTS TO THE BILL, MY COMMENTS WILL BE LIMITED TO ONE ASPECT OF IT, THAT WHICH WOULD CREATE AN ACCOUNT TO FUND DOMESTIC VIOLENCE SHELTERS AND CRISIS LINES. DOMESTIC VIOLENCE PROGRAMS, AND THE VICTIMS THEY SERVE, WOULD BENEFIT GREATLY FROM THESE PROPOSED CHANGES.

CURRENTLY DOMESTIC VIOLENCE PROGRAMS ARE EXPERIENCING A TREMENDOUS SURGE IN THE AMOUNT OF MONEY AVAILABLE TO US AT THE FEDERAL LEVEL. THE TWO PRIMARY SOURCES OF FUNDS FOR OUR PROGRAMS--VICTIMS OF CRIME ACT (VOCA) AND VIOLENCE AGAINST WOMEN (VAWA)-- ARE BOTH IN THE MIDST OF RECORD LEVELS OF FUNDING. THESE ARE POSITIVE, PRODUCTIVE DAYS TO BE IN THE BUSINESS OF WORKING WITH VICTIMS OF SPOUSE ABUSE. AND, THE NUMBERS OF WOMEN SEEKING ASSISTANCE ARE RISING RIGHT ALONG WITH FUNDING LEVELS. IT SEEMS THE MORE SERVICES WE PROVIDE, AND THE MORE ACCESSIBLE WE MAKE THEM, THE MORE VICTIMS ARE WILLING TO ASK FOR HELP.

WHAT WE ARE ASKING FOR, AND WHAT THIS BILL IS SEEKING, IS AN INCREASE IN THE LEVEL OF STATE FUNDING. HISTORICALLY, THE STATE'S CONTRIBUTION TO FUNDING OF DOMESTIC VIOLENCE PROGRAMS HAS BEEN VERY LIMITED. THE MONEY WE DO RECEIVE COMES THROUGH THE DEPT. OF HEALTH & HUMAN SERVICES AND DECREASES EACH YEAR.

EVEN THAT MONEY CONTAINS FEDERAL DOLLARS, WITH THE STATE'S SHARE APPROXIMATELY 40%. SO THE SITUATION WE HAVE CURRENTLY IS THAT THE STATE OF MONTANA CONTRIBUTES ONLY A FRACTION OF WHAT IT TAKES TO PROVIDE SERVICES TO OUR RESIDENTS WHO ARE VICTIMS OF FAMILY VIOLENCE.

IN OUR PROGRAM, FOR INSTANCE, WE HAVE RECEIVED GRANTS TOTALLING $88,782 TO WORK WITH SURVIVORS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT THIS YEAR. OF THAT TOTAL, ONLY $7,140 COMES FROM THE STATE'S GENERAL FUND. IN OUR CASE, THEN, STATE DOLLARS FUND ONLY 8% OF THE COSTS WE NEED TO ADMINISTER THESE PROGRAMS OVER THREE COUNTIES.

AT THE SAME TIME THE NUMBER OF VICTIMS SEEKING SERVICES INCREASES EACH YEAR. AT THE FRIENDSHIP CENTER LAST YEAR WE SHELTERED 10% MORE WOMEN THAN ONE YEAR AGO AND 18% MORE CHILDREN. OUR SERVICES ARE AVAILABLE 24 HOURS/DAY SEVEN DAYS/WEEK THROUGH A CRISIS HOTLINE. THE NEED FOR OUR SERVICES IS CERTAINLY NOT DIMINISHING BUT STATE FUNDS AVAILABLE TO US ARE. THIS BILL PRESENTS A NOVEL AND WE BELIEVE WORKABLE SOLUTION TO THIS DILEMMA BY ROUTING FEES ALREADY BEING COLLECTED TO THESE AREAS OF NEED.

WE ARE ASKING YOU TO GIVE OUR REQUEST THOROUGH CONSIDERATION. THIS PROPOSED SOLUTION DOES NOT REQUIRE A RAISE IN TAXES AND ITS BENEFITS WILL BE FELT IN EVERY COUNTY IN THE STATE. IT WILL BE AN ONGOING SOURCE OF FUNDS, LASTING BEYOND THE CURRENT, CYCLICAL GENEROSITY OF THE FEDERAL GOVERNMENT.

WITHOUT THIS, OR SOME OTHER FORM OF INCREASED FUNDING, OUR PROGRAMS WILL NOT BE ABLE TO STAY AFLOAT. THIS IS A TIME WHEN MORE WOMEN THAN EVER

ARE ASKING FOR HELP IN LEAVING VIOLENT HOMES. PLEASE GIVE US THE OPPORTUNITY TO RESPOND TO THOSE REQUESTS WITH THOROUGH, COMPETENT AND PROFESSIONAL SERVICES. THANK YOU VERY MUCH.

HAMILTON CITY COURT
223 S. 2ND STREET
HAMILTON MT 59840
PH: 406-363-6823
FAX: 406-363-2102

EXHIBIT 12
DATE 1/31/97
HB 343

Chairman of the House Judiciary Committee
c/o Missoula City Attorney's Office
425 Ryman
Missoula MT 59802-4297

January 27, 1997

Re: HB 343

Dear Chairman and Members of the Committee:

Please accept this letter as my testimony in support of the amendments proposed in the above-referenced bill. I will touch upon four (4) specific parts of the proposed amendments about which I have strong feelings:

1) **elimination of filing fees** for orders of protection.
2) allowing **peace officers** to use **discretion** in determining "**primary aggressor**"
3) **no bail** for defendants arrested for **any** assault against a partner or family member
4) clarification that a **conviction** under the former **domestic abuse** statute **is a conviction** under the current **partner or family member assault** statute

1) I support the elimination of filing fees now required with applications for orders of protection. In my opinion, requiring a fee of any kind sends the message to the Petitioner (person seeking relief) that obtaining an order of protection is a "service to them which must be purchased" rather than a "right to protection which **any person** is entitled to" as victims of domestic violence or stalking. The requirement that fees be paid is a further deterrent to the petitioner who is already intimidated by the process alone. The fee requirement compounds the difficulty many petitioners have in admitting they can no longer handle the problem as a family. Often they cannot pay the fee because of their current situation and are subjected to dealing with the humiliation of filing an indigency affidavit. Alleviating the fees will ease the process in many ways.

2) Allowing peace officers to use their professional discretion in determining the primary aggressor in domestic violence situations is a very sensible addition to the statute. This determination would assist law enforcement in dealing with the aftermath of a domestic violence situation where children are present. This on the site determination by law enforcement would likely result in allowing one of the parties to remain in the home,

avoiding the necessity of temporary placement of the children in foster care through Family Services.

3) The rule of **no bail for defendants arrested for partner or family member assault** has been the most useful tool in defusing violent situations. Everyone involved including the victim, children and law enforcement are safer because of this **no bond** rule. It follows a sensible and consistent trend to make **no bail in ANY case of assault against a partner** or **family member**, regardless of the statute under which the crime is charged.

4) Convictions for the formerly named "domestic abuse" statute most certainly should be considered in the enhancement of penalty for the currently named "partner or family member assault" statute. To me it makes no sense whatsoever to discount the offender's pattern and practice of violent and abusive behavior by failing to acknowledge such prior convictions for the same offense(s) because of this sort of "technical" difference. Even from state to state "similar" violations are recognized in what is termed an **"interstate compact"** for determination of numbers of prior convictions for crimes with the same elements.

Thank you for your consideration.

Respectfully,

MARTHA A. BETHEL
City Judge
Hamilton City Court
223 S. 2nd St.
Hamilton MT 59840

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1/31/97

BILL NO. HB 343 SPONSOR(S) Rep. Duane Grimes

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Beth Baker	Dept of Justice	✓	
John Connor	MT County Atty Assn	✓	
Kathy Sewell	MT COALITION	✓	
Robert Hainle 435 Ryman, Msla, MT 59801	myself City of Missoula Police	✓	
Kelly Slattery-Robinson 1130 W. Broadway Msla 59802	YWCA	✓	
Molly Cogswell-Kelley 600 1/2 Toole Ave Msla 59802	YWCA	✓	
Karen A. Orzech 200 West Broadway Missoula, MT 59802	Crime Victim Advocate in Missoula City/County	✓	
Matthew Dale 1503 GALLATIN HELENA	FRIENDSHIP CENTER	✓	
Fred Unmack 75 Pedersen Glendive	DAWSON CO. ATTORNEY OFF.	✓	
Kate Cholewa	MT Womens Lobby	✓	
~~Meaghan Daly~~			
Judy Jang	City Atty Missoula	✓	
Diane KEEFAUVER Collier	Women's LAW CAUCUS	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

Carol Graham - Missoula YWCA ✓

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 6, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: REP. BOHARSKI was excused until 10:30 AM.
REP. ELLINGSON was excused until 9:00 AM.

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted:	HB 243, HB 337, SB 103 POSTED 1/28/97
Executive Action:	SB 103	BE CONCURRED IN
	HB 343	DO PASS AS AMENDED
	HB 231	TABLED

Discussion:
{Tape: 2; Side: B; Approx. Time Count: 38.5 - end of tape.}

Motion: **REP. WYATT moved that a subcommittee be formed to work out amendments to HB 231.** The motion carried and Chairman Clark appointed RESP. ELLINGSON, SOFT, GRIMES and MC CULLOCH to that subcommittee.
{Tape: 3; Side: A; Approx. Time Count: 0.1}

EXECUTIVE ACTION ON SB 103

Motion: **REP. AHNER moved SB 103 BE CONCURRED IN.**
{Tape: 3; Side: A; Approx. Time Count: 2.6}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 4.0 - 14.3}

Vote: The motion carried 18 - 1, REP. BOHARSKI voting no.

EXECUTIVE ACTION ON HB 343

Motion: **REP. AHNER moved HB 343 DO PASS.** **EXHIBITS 10 and 11**
{Tape: 3; Side: A; Approx. Time Count: 17.0}

Motion/Vote: **REP. GRIMES moved the amendments of 1/27/97.** The motion carried 18 - 1, REP. MC GEE voting no.

Motion: **REP. GRIMES moved HB 343 DO PASS AS AMENDED.**

Motion: **REP. ANDERSON moved further amendments to HB 343.**
{Tape: 3; Side: A; Approx. Time Count: 20.8}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 21.3 - 25.9}

Vote: The motion failed by voice vote.
{Tape: 3; Side: A; Approx. Time Count: 26.5}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 27.0 - 32.3}

Motion: **REP. MC GEE moved to amend HB 343 by striking "primary aggressor" in section 8.**
{Tape: 3; Side: A; Approx. Time Count: 33.8}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 33.8-Tape 3; Side B; 3.5}

Vote: The motion failed by voice vote.

Motion: **REP. JON ELLINGSON moved HB 343 DO PASS AS AMENDED.**

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 4.7}

Vote: The motion carried 16 - 2. REPS. MOLNAR and MC GEE voting no. (REPS. MC CULLOCH and SMITH voted aye by proxy.) (REPS. HANSON and BOHARSKI were absent and did not vote.)

MOTION/VOTE: **REP. MC GEE MOVED TO ADJOURN.** THE MOTION CARRIED by unanimous voice vote.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 2/6/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI 10:20	✓		✓
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON 9 AM	✓		✓
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH 9:30	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

Fact Sheet Prepared by the Montana Coalition Against Domestic and Sexual Violence
Legislative Session 1997

National Statistics

Domestic Violence is the leading cause of serious injury to American women, more common than muggings and car crashes combined. (Surgeon General Public Health Source Book)

A woman is battered every 15 seconds in the U.S. (FBI Uniform Crime Reports)

Nearly half of all incidents of domestic violence against women discovered in the National Crime Survey (48%) were not reported to the police. (Bureau of Justice Statistics)

Violent youth are four times more likely to come from homes in which they witness domestic violence than are nonviolent youth. (American Journal of Psychiatry, Vol. 140)

Domestic Violence is repetitive in nature; about one in five women victimized by their spouse or ex-spouse reported that they have been a victim of at least three assaults in the last six months. (The National Crime Victimization Survey)

Women are most likely to be murdered when attempting to report abuse or to leave an abusive relationship. (When Battered Women Kill Browne)

Four women are killed every day in America by a husband or boyfriend. (Violence Update, Vol 1)

Montana Domestic Violence Programs report the following statistics for 1996:

Over 15,000 calls made to the various crisis lines/services
Over 4,000 personal contacts were made across the state
Over 900 women and 850 children were given shelter
Over 170 battered men were served
Over 10,000 nights of shelter were given to families

1,135 prevention education programs were given in the state
Over 15,000 people were educated about Domestic Violence

Over 500 volunteers serve the various programs

Over 1,515 calls were received regarding sexual violence

FACT SHEET PREPARED BY MONTANA COALITION AGAINST DOMESTIC AND SEXUAL VIOLENCE
Legislative Session 1997

DATE 2/6/97
HB 243

Department of Health and Human Services
State of Montana
Domestic Violence Program

Program Description

The Domestic Violence Program provides funding for community-based projects which give victims of spousal abuse/ domestic violence moral support, assistance with emergency housing, and information about domestic violence laws and legal rights. The community based projects also make referrals to other agencies and contracts for additional assistance. For FY 97, the Domestic Violence Program contracted with 21 service providers statewide. Contracts are awarded competitively to private, not for profit agencies. Award decisions were made by agency staff and the Montana Coalition against Domestic and Sexual Violence.

Goals

- TO assist victims of family violence and their families in securing emergency food, shelter, and counseling.
- TO provide program participants with advocacy, education, assistance with legal, financial, and other crises, and referral to helping agencies.

Services Provided includes but is not limited to:

Emergency shelters, Safe Homes, Counseling, Advocacy, Education, Assistance with legal and financial crises, referrals and training for domestic violence service providers.

Budget and Funding

The Domestic Violence Program has both state and federal funding sources. Federal funding for this program is from the Family Violence Prevention and Services Act. State funding for the Domestic Violence Program during FY 96 & 97 includes $146,000 of State General Funds.

The 1987 Montana Legislature approved additional funds for this program from two state Special Revenue sources:

1. 1% of Justice Court Fines, penalties, forfeitures and fees and
2. 50% of fines imposed for domestic abuse except those collected by a Justice Court

The current level of federal allocation is $200,000 per year (at least 70% has to be allocated for emergency shelters). The following chart contains budget figures for FY94 through FY97.

	FY94	FY95	FY96	FY97
General Fund	111,000	111,000	111,000	111,000
State Special Revenue Fund	35,000	35,000	35,000	35,000
Federal Special Revenue	160,000	200,000	160,000	200,000
Total Funding Costs	306,000	346,000	306,000	346,000

The average allocation per program is between $14,571.43 and $16,476.19.

HOUSE STANDING COMMITTEE REPORT

February 6, 1997

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 343** (first reading copy -- white) **do pass as amended**.

Signed: Bob Clark

Bob Clark, Chair

And, that such amendments read:

1. Title, line 5.
Following: "VIOLENCE;"
Strike: "ELIMINATING FILING FEES FOR ORDERS OF PROTECTION;"
Following: "CERTAIN"
Insert: "FILING"

2. Title, lines 5 and 6.
Following: second "FEES" on line 5
Strike: remainder of line 5 through "FEES" on line 6

3. Title, line 15.
Strike: "25-31-112, 40-15-201,"

4. Page 1, line 24.
Following: "marriage"
Strike: ", for a temporary order of protection, or for an order of protection"

5. Page 2, line 29.
Strike: "11"
Insert: "9"

6. Page 3, lines 21 and 22.
Strike: subsection (9) in its entirety

7. Page 3, line 24 through page 4, line 7.
Strike: section 2 in its entirety
Renumber: subsequent sections

2/6
ymp

Committee Vote:
Yes 16, No 2.

281433SC.Hgd

2nd reading

Absent or not voting: Bitney.
Total 1

Motion that HB 331 do pass, as amended, carried as follows:

Ayes: Adams, Ahner, Anderson, Arnott, Barnett, Barnhart, Beaudry, Bergsagel, Bitney, Bohlinger, Bookout, Brainard, Carey, Clark, Cocchiarella, Curtiss, Devaney, Dowell, Ewer, Galvin, Gillan, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Hayne, Heavy Runner, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Keenan, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McCann, McCulloch, McGee, Menahan, Mills, Molnar, Mood, Ohs, Pease, Peck, Prouse, Quilici, Raney, Ream, Rose, Ryan, Sands, Schmidt, Simon, Simpkins, Simpson, Sliter, Soft, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tuss, Vick, Walters, Wells, Whitehead, Wiseman, Wyatt, Zook, Mr. Speaker.
Total 81

Noes: Bankhead, Bergman, Boharski, Cobb, DeBruycker, Denny, Ellingson, Feland, Grady, Harrington, Jore, Kasten, Orr, Pavlovich, Rehbein, Smith, Tropila, Wagner.
Total 18

Excused: None.
Total 0

Absent or not voting: Ellis.
Total 1

HB 343 - Representative Grimes moved HB 343 do pass. Motion carried as follows:

Ayes: Ahner, Anderson, Barnhart, Beaudry, Bergman, Bitney, Bohlinger, Bookout, Carey, Clark, Cobb, Cocchiarella, Curtiss, Denny, Dowell, Ellingson, Ellis, Ewer, Galvin, Gillan, Grimes, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Masolo, McCann, McCulloch, Menahan, Mills, Mood, Ohs, Pease, Peck, Quilici, Raney, Ream, Rose, Ryan, Sands, Schmidt, Simon, Simpkins, Simpson, Smith, Soft, Squires, Stovall, Swanson, Tash, Taylor, Tropila, Tuss, Whitehead, Wiseman, Wyatt, Zook, Mr. Speaker.
Total 71

Noes: Adams, Arnott, Bankhead, Barnett, Bergsagel, Boharski, Brainard, DeBruycker, Devaney, Grady, Grinde, Jore, Kasten, Keenan, Marshall, McGee, Orr, Pavlovich, Prouse, Rehbein, Sliter, Story, Trexler, Vick, Wagner, Walters, Wells.
Total 27

Excused: None.
Total 0

Absent or not voting: Feland, Molnar.
Total 2

HB 264 - Representative Molnar moved HB 264 do pass.

Representative Molnar moved HB 264, second reading copy, be amended as follows (amendment #1):

3rd Rd. 1-48

Total 92

Noes: Adams, Boharski, Brainard, Grinde, Jore, Prouse, Wagner, Wells.
Total 8

Voted Absentee: Bergsagel, Aye.

Excused: None.
Total 0

Absent or not voting: None.
Total 0

HB 343 passed as follows:

Ayes: Ahner, Anderson, Barnhart, Beaudry, Bergman, Bitney, Bohlinger, Bookout, Brainard, Carey, Clark, Cobb, Cocchiarella, Curtiss, Denny, Devaney, Dowell, Ellingson, Ellis, Ewer, Galvin, Gillan, Grady, Grimes, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McCann, McCulloch, Menahan, Mills, Mood, Ohs, Pavlovich, Pease, Peck, Quilici, Raney, Ream, Rose, Ryan, Sands, Schmidt, Simpkins, Simpson, Sliter, Soft, Squires, Stovall, Swanson, Tash, Taylor, Tropila, Tuss, Whitehead, Wiseman, Wyatt, Zook, Mr. Speaker.
Total 75

Noes: Adams, Arnott, Bankhead, Barnett, Bergsagel, Boharski, DeBruycker, Feland, Grinde, Jore, Kasten, Keenan, McGee, Molnar, Orr, Prouse, Rehbein, Smith, Story, Trexler, Vick, Wagner, Walters, Wells.
Total 24

Voted Absentee: Bergsagel, No.

Excused: None.
Total 0

Absent or not voting: Simon.
Total 1

MOTIONS

HB 160 - Representative Tash moved HB 160 be taken from the Committee on Local Government and rereferred to the Committee on Natural Resources. Motion carried.

ANNOUNCEMENTS

Committee meetings were announced by committee chairmen.

Representative Grinde moved the House adjourn until 12:50 p.m., Thursday, February 13, 1997. Motion carried.

House adjourned at 2:57 p.m.

SENATE JUDICIARY

- BILL NO -	REFERRED -	HEARING -	OTHER CONSIDERATION DATES -	EXECUTIVE ACTION/DATE/VOTE -------	REREFERRED ----	DATE READ
HB0306	3/07	3/24		TABLED ON 03/27 VOTE:7-3		
HB0321	MCCULLOCH, LINDA 2/08	2/20	MAKE IT AN OFFENSE TO OBSTRUCT A PROCESS SERVER	CONCUR VOTE: 10-0	2-20	2/20
HB0323	BOHARSKI, WILLIAM 3/03	3/17	PROHIBIT SAME-SEX MARRIAGES	CONCUR VOTE: 7-3	3-18	3/19
HB0325	BRAINARD, MATT 2/19	3/10	AMEND CONST. TO MANDATE GRAND JURY IF PEOPLE PETITION FOR ONE	TABLED ON 03/11 VOTE:		
HB0337	BOHLINGER, JOHN 2/19	3/04	IMMUNITY FOR DENTISTS WHO PROVIDE CHARITABLE SERVICES	CONCUR AS AMENDED VOTE: 10-0	3-4	3/06
HB0339	CAREY, BILL 2/11	3/11	CHANGE PENALTY FOR ONE UNDER 21 WHO FAILS DUI TEST	CONCUR AS AMENDED VOTE: 9-1	3-13	3/15
HB0343	GRIMES, DUANE 2/13	3/10	REVISE DOMESTIC VIOLENCE LAWS	CONCUR AS AMENDED VOTE: 10-0	3-11	3/12
HB0346	TROPILA, JOE 3/03	3/13	GENERALLY REVISING LAWS RELATING TO MANDATORY MOTOR VEHICLE INSURANCE	CONCUR AS AMENDED VOTE: 10-0	3-13	3/15
HB0352	SLITER, PAUL 2/19	3/10	IMMUNIZE OWNER OF STOLEN PROPERTY FROM LIABLE LATER OCCURRING	CONCUR AS AMENDED VOTE: 7-3	3-11	3/12
HB0401	BARNETT, JOE 2/19	3/12	REVISE LAWS GOVERNING BAIL	CONCUR AS AMENDED VOTE: 10-0	3-12	3/14
HB0411	AHNER, CHRIS 2/19	3/12	MAKE IT AN OFFENSE TO TATTOO A MINOR WITHOUT PARENTAL CONSENT	CONCUR VOTE: 10-0	3-12	3/13
HB0426	KOTTEL, DEB 2/20	3/18	REVISE UNIFORM COMMERCIAL CODE LETTERS OF CREDIT AND SECURITIES	CONCUR AS AMENDED VOTE:10-0	3-19	3/21
	WELLS, JACK		GENERALLY AMEND CONCEALED WEAPON PERMIT LAW			

HOUSE BILL NO. 343

INTRODUCED BY GRIMES, NELSON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO DOMESTIC VIOLENCE; ~~ELIMINATING FILING FEES FOR ORDERS OF PROTECTION;~~ INCREASING CERTAIN FILING FEES ~~TO OFFSET THE ELIMINATION OF FEES~~; CREATING AN ACCOUNT TO HELP FUND DOMESTIC VIOLENCE SHELTERS AND CRISIS LINES; PROVIDING THAT IN PARTNER OR FAMILY MEMBER ASSAULT SITUATIONS A PEACE OFFICER MAY ARREST THE PRIMARY AGGRESSOR; PROVIDING THAT IN ANY ASSAULT AGAINST A PARTNER OR FAMILY MEMBER AN OFFENDER MUST GO TO JAIL WITHOUT BAIL; PROVIDING THAT IN A HEARING FOR AN ORDER OF PROTECTION THE VICTIM'S PAST SEXUAL HISTORY MAY NOT BE PLACED INTO EVIDENCE; PROVIDING A PRIVILEGE FOR A VICTIM OF PARTNER OR FAMILY MEMBER ASSAULT FROM DISCLOSURE OF DISCUSSIONS WITH SHELTER WORKERS AND VOLUNTEERS; CLARIFYING THAT A CONVICTION UNDER THE FORMER DOMESTIC ABUSE STATUTE IS A CONVICTION UNDER THE CURRENT PARTNER OR FAMILY MEMBER ASSAULT STATUTE; AMENDING SECTIONS 25-1-201, ~~25-31-112, 40-15-201,~~ 40-15-202, 40-15-302, 45-5-206, 46-6-311, AND 46-9-302, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

APPROVED BY COM
ON JUDICIARY

HOUSE BILL NO. 343

INTRODUCED BY GRIMES, NELSON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO DOMESTIC VIOLENCE; ~~ELIMINATING FILING FEES FOR ORDERS OF PROTECTION;~~ INCREASING CERTAIN FILING FEES ~~TO OFFSET THE ELIMINATION OF FEES~~; CREATING AN ACCOUNT TO HELP FUND DOMESTIC VIOLENCE SHELTERS AND CRISIS LINES; PROVIDING THAT IN PARTNER OR FAMILY MEMBER ASSAULT SITUATIONS A PEACE OFFICER MAY ARREST THE PRIMARY AGGRESSOR; PROVIDING THAT IN ANY ASSAULT AGAINST A PARTNER OR FAMILY MEMBER AN OFFENDER MUST GO TO JAIL WITHOUT BAIL; PROVIDING THAT IN A HEARING FOR AN ORDER OF PROTECTION THE VICTIM'S PAST SEXUAL HISTORY MAY NOT BE PLACED INTO EVIDENCE; PROVIDING A PRIVILEGE FOR A VICTIM OF PARTNER OR FAMILY MEMBER ASSAULT FROM DISCLOSURE OF DISCUSSIONS WITH SHELTER WORKERS AND VOLUNTEERS; CLARIFYING THAT A CONVICTION UNDER THE FORMER DOMESTIC ABUSE STATUTE IS A CONVICTION UNDER THE CURRENT PARTNER OR FAMILY MEMBER ASSAULT STATUTE; AMENDING SECTIONS 25-1-201, ~~25-31-112, 40-15-201,~~ 40-15-202, 40-15-302, 45-5-206, 46-6-311, AND 46-9-302, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-1-201, MCA, is amended to read:

"25-1-201. Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage~~, for a temporary order of protection, or for an order of protection~~, from the plaintiff or petitioner, $80; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, a fee of ~~$120~~ $150; and for filing a petition for legal separation, a fee of ~~$120~~ $150;

(b) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five pages of each file, per request, and 25 cents per additional page;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100.

(2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $14 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the fee for filing a petition for dissolution of marriage or legal separation, $40 must be deposited in the state general fund, $35 must be remitted to the state to be deposited as provided in 19-5-404, $5 must be deposited in the children's trust fund account established by 41-3-702, $30 must be deposited in the partner and family member assault intervention and treatment fund established by [section ~~11~~ 9], and $20 must be deposited in and credited to the district court fund. If no district court fund exists, the $20 must be deposited in the general fund for district court operations.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), $35;

(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), $25;

(iii) on the entry of judgment as provided in subsection (1)(c), $15; and

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be remitted to the state to be deposited as provided in 19-5-404.

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund $20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries.

~~(9) There is no fee for filing a petition for a temporary order of protection or for an order of protection under Title 40, chapter 15.~~"

~~**Section 2. Section 25-31-112, MCA, is amended to read:**~~

~~"**25-31-112. Fees.** (1) The following is the schedule of fees which that, except as provided in 25-35-605, shall must be paid in every civil action in a justice's court:~~

~~(1)(a) $25 except as provided in subsection (2), $26 when complaint is filed, to be paid by the plaintiff;~~

~~(2)(b) $10 when the defendant appears, to be paid by the defendant;~~

~~(3)(c) $10 to be paid by the prevailing party when judgment is rendered. In cases where in which~~

~~judgment is entered by default, no charge except the $25 for the filing of the complaint shall~~ must ~~be made for any services, including issuing and return of execution.~~

~~(4)~~(d) ~~$10 for all services in an action where~~ in which ~~judgment is rendered by confession;~~

~~(5)~~(e) ~~$10 for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate.~~

~~(2) There is no fee for filing a petition for a temporary order of protection or for an order of protection under Title 40, chapter 15.~~"

NEW SECTION. **Section 2. Temporary order or temporary injunction -- continuing effect.** A temporary order or temporary injunction issued under 40-4-121 before October 1, 1995, continues in full force and effect as provided in the order or injunction.

~~**Section 4.** Section 40-15-201, MCA, is amended to read:~~

~~"**40-15-201. Temporary order of protection.** (1) A petitioner may seek a temporary order of protection from a court listed in 40-15-301. The petitioner shall file a sworn petition that states that the petitioner is in reasonable apprehension of bodily injury or is a victim of one of the offenses listed in 40-15-102, has a relationship to the respondent if required by 40-15-102, and is in danger of harm if the court does not issue a temporary order of protection immediately.~~

~~(2) Upon a review of the petition and a finding that the petitioner is in danger of harm if the court does not act immediately, the court shall issue a temporary order of protection that grants the petitioner appropriate relief. The temporary order of protection may include any or all of the following orders:~~

~~(a) prohibiting the respondent from threatening to commit or committing acts of violence against the petitioner and any designated family member;~~

~~(b) prohibiting the respondent from harassing, annoying, disturbing the peace of, telephoning, contacting, or otherwise communicating, directly or indirectly, with the petitioner, any named family member, any other victim of this offense, or a witness to the offense;~~

~~(c) prohibiting the respondent from removing a child from the jurisdiction of the court;~~

~~(d) directing the respondent to stay 1,500 feet or other appropriate distance away from the petitioner, the petitioner's residence, the school or place of employment of the petitioner, or any specified place frequented by the petitioner and by any other designated family or household member;~~

~~(e) removing and excluding the respondent from the residence of the petitioner, regardless of ownership of the residence;~~

~~(f) prohibiting the respondent from possessing or using the firearm used in the assault;~~

~~(g) prohibiting the respondent from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring the respondent to notify the petitioner, through the court, of any proposed extraordinary expenditures made after the order is issued;~~

~~(h) directing the transfer of possession and use of the residence, an automobile, and other essential personal property, regardless of ownership of the residence, automobile, or essential personal property, and directing an appropriate law enforcement officer to accompany the petitioner to the residence to ensure that the petitioner safely obtains possession of the residence, automobile, or other essential personal property or to supervise the petitioner's or respondent's removal of essential personal property;~~

~~(i) directing the respondent to complete violence counseling, which may include alcohol or chemical dependency counseling or treatment, if appropriate;~~

~~(j) directing other relief considered necessary to provide for the safety and welfare of the petitioner or other designated family member.~~

~~(3) If the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld, except by order of the court for good cause shown.~~

~~(4) The court may, without requiring prior notice to the respondent, issue an immediate temporary order of protection for up to 20 days if the court finds, on the basis of the petitioner's sworn petition or other evidence, that harm may result to the petitioner if an order is not issued before the 20-day period for responding has elapsed.~~

~~(5) There is no fee for filing a petition for a temporary order of protection or for an order of protection."~~

Section 3. Section 40-15-202, MCA, is amended to read:

"40-15-202. Order of protection -- hearing -- evidence. (1) A hearing must be conducted within 20 days from the date the court issues a temporary order of protection. At the hearing, the court shall determine whether good cause exists for the temporary order of protection to be continued, amended, or made permanent.

(2) The respondent may request an emergency hearing before the end of the 20-day period by filing an affidavit that demonstrates that the respondent has an urgent need for the emergency hearing. An emergency hearing must be set within 3 working days of the filing of the affidavit.

(3) The order of protection may not be made mutually effective by the court. The respondent may obtain an order of protection from the petitioner only by filing an application for an order of protection and following the procedure described in this chapter.

(4) (a) Except as provided in subsection (4)(b), evidence concerning a victim's sexual conduct is not admissible in a hearing under this section.

(b) Evidence of a victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease may be admitted in a hearing under this section only if that sexual conduct is at issue in the hearing.

(5) If a respondent proposes to offer evidence subject to subsection (4)(b), the trial judge shall order a separate hearing to determine whether the proposed evidence is admissible under subsection (4)(b)."

Section 4. Section 40-15-302, MCA, is amended to read:

"**40-15-302. Appeal to district court -- order to remain in effect.** (1) An order issued by a justice's court, municipal court, or city court pursuant to 40-15-201 is immediately reviewable by the district judge upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a justice's court, municipal court, or city court made pursuant to 40-15-201 or 40-15-204.

(2) A case in which an order has been issued by a justice's court, municipal court, or city court pursuant to 40-15-201 or 40-15-204 may be removed to district court upon filing of a notice of removal.

(3) If a temporary order of protection or an order of protection issued by a court of limited jurisdiction is appealed or removed to an appellate court, the order continues in full force and effect unless modified by the appellate court."

Section 5. Section 45-5-206, MCA, is amended to read:

"**45-5-206. Partner or family member assault -- penalty.** (1) A person commits the offense of partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a partner or family member;

(b) negligently causes bodily injury to a partner or family member with a weapon; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

(2) For the purposes of Title 40, chapter 15, 46-6-311, and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) (a) An offender convicted of partner or family member assault shall be fined an amount not less than $100 or more than $1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense. An offender convicted of a second offense under this section shall be fined not less than $300 or more than $1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year. Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005. On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than $500 and not more than $50,000 and be imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(b) For the purpose of determining the number of convictions under this section, a conviction means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated. A prior conviction for domestic abuse under this section is a prior conviction for purposes of subsection (3)(a).

(4) (a) An offender convicted of partner or family member assault ~~shall~~ must be required to pay for

and complete a counseling assessment with a focus on violence, dangerousness, and chemical dependency. The offender shall follow through on all recommendations made by the counseling provider. The ~~counselor~~ counseling provider must be approved by the court. The counseling must include a counseling assessment and a minimum of 25 hours of counseling, in addition to the assessment. The assessment and the counseling must be:

(i) with a person licensed under Title 37, chapter 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent conduct of the offender.

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender ~~shall~~ must be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) At the time of sentencing, the court shall provide an offender a written copy of the offender's sentence."

Section 6. Section 46-6-311, MCA, is amended to read:

"**46-6-311. Basis for arrest without warrant -- arrest of primary aggressor.** (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) (a) The summoning of a peace officer to a place of residence by a partner or family member

constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.

(b) If a peace officer receives a complaint of violence or threat of violence from more than one person who is a family member or partner, the officer shall evaluate the complaints separately to determine who is the primary aggressor. If, based on the officer's evaluation, the officer determines that one person is the primary aggressor, the officer may arrest only the primary aggressor. A determination of who the primary aggressor is must be based on but is not limited to the following considerations, regardless of who was the first aggressor:

(i) the prior history of violence between the partners or family members, if information about the prior history is available to the officer;

(ii) the relative severity of injuries received by each person;

(iii) whether an act of or threat of violence was taken in self-defense;

(iv) the relative sizes and apparent strength of each person;

(v) the apparent fear or lack of fear between the partners or family members; and

(vi) statements made by witnesses."

Section 7. Section 46-9-302, MCA, is amended to read:

"**46-9-302. Bail schedule -- acceptance by peace officer.** (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is any assault on a partner or family member ~~assault~~, as partner or family member is defined in 45-5-206, or stalking, as defined in 45-5-220.

(2) A peace officer may accept bail on behalf of a judge:

(a) in accordance with the bail schedule established under subsection (1); or

(b) whenever the warrant of arrest specifies the amount of bail.

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered."

NEW SECTION. **Section 8. Advocate privilege.** (1) Unless a report is otherwise required by law,

an advocate may not, without consent of the victim, be examined as to any communication made to the advocate by a victim and may not divulge records kept during the course of providing shelter, counseling, or crisis intervention services.

(2) This privilege belongs to the victim and may not be waived, except by express consent. The privilege continues even if the victim is unreachable. Consent may not be implied because the victim is a party to a divorce or custody proceeding. The privilege terminates upon the death of the victim.

(3) For purposes of this section, the following definitions apply:

(a) "Advocate" means an employee or volunteer of a domestic violence shelter, crisis line, or victim's services provider that provides services for victims of sexual assault, stalking, or any assault on a partner or family member.

(b) "Victim" means a person seeking assistance because of partner or family member assault, any sexual assault, or stalking, whether or not the victim seeks or receives services within the criminal justice system.

NEW SECTION. **Section 9. Partner and family member assault intervention and treatment fund account.** (1) There is a partner and family member assault intervention and treatment fund account in the state special revenue fund in the state treasury. The money in the account is allocated to the department of public health and human services to fund services to victims of partner or family member assault, as provided in subsections (2) and (3).

(2) The department shall distribute the money in the account, as provided in subsection (3), to agencies that provide direct services to victims of partner or family member assault, including but not limited to shelters, crisis lines, safe homes, and victim's counseling providers. A service provider is eligible to receive money under this section for services provided to a victim of partner or family member assault, whether or not the victim seeks or receives services within the criminal justice system.

(3) A service provider that provides direct services to victims of partner or family member assault shall apply to the department for distribution of money under this section. The department shall evaluate a provider's eligibility to receive money under this section based on available money, the needs of the provider, whether the provider includes programs focused on prevention of partner and family member assault, the quality of services provided by the provider, the need for services in the community, and the need for improved or continuing services in the community.

NEW SECTION. **Section 10. Codification instruction.** (1) [Section ~~10~~ 8] is intended to be codified as an integral part of Title 26, chapter 1, part 8, and the provisions of Title 26, chapter 1, part 8, apply to [section ~~10~~ 8].

(2) [Section ~~11~~ 9] is intended to be codified as an integral part of Title 40, chapter 15, part 1, and the provisions of Title 40, chapter 15, part 1, apply to [section ~~11~~ 9].

NEW SECTION. **Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 12. Retroactive applicability.** [Section ~~3~~ 2] applies retroactively to October 1, 1995.

NEW SECTION. **Section 13. Effective date.** [This act] is effective July 1, 1997.

-END-

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **VICE CHAIRMAN LORENTS GROSFIELD**, on March 10, 1997, at 9:00 a.m., in the Senate Judiciary Chambers (Room 325) of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 325, HB 343, HB 352, posted March 4, 1997
Executive Action: None

HEARING ON HB 352

Sponsor: **REP. PAUL SLITER, HD 76, Somers**

Proponents: **Chip Erdmann, as a Montana citizen**
Rod Carey, Helena attorney
Alfred Bidwell, Weapons Collectors Society and Northwest Arms Collectors
REP. MATT BRAINARD, HD 62, Missoula

Opponents: **Tim Kuntz, Legislative Intern, Montana Trial Lawyers Association (MTLA)**

{Tape: 1; Side: B; Approx. Time Count: #00; Comments: 9:50 a.m.}

HEARING ON HB 343

Sponsor: REP. DUANE GRIMES, HD 39, Clancy

Proponents:
Judy Wang, Assistant City Attorney, Missoula, and for Warren Little, Diane Trip, Karen Oraick, and Matthew Robinson
John Conner, Department of Justice
Michelle Doyle, Montana Law Enforcement Academy (MLEA)
Robert Heinle, Missoula Police Department
Betty Waddell, Montana Association of Churches
Kathy Sewell, Public Outreach Coordinator, Montana Coalition Against Domestic Violence
Kelly Slattery-Robinson, Missoula YWCA
Gene Kiser, Montana Board of Crime Control
Kate Cholewa, Montana Women's Lobby
Sharon Hoff, Montana Catholic Conference
Mike McGrath, Lewis and Clark County Attorney; President, Montana County Attorneys; and Vice President, Board of Friendship Center of Helena
Laurie Koutnik, Montana Christian Coalition

Opponents: None

Opening Statement by Sponsor: REP. DUANE GRIMES, HD 39, Clancy. This is an extremely important bill concerning an extremely critical problem - domestic abuse. The danger is real, but some statutes are ambivalent and hostile to those in the midst of assault in family homes. We are now trying to clarify additional problems and improve the situation.

Section 1, 25-1-201, MCA, deals with fees. Section 4, 40-15-202, MCA, addresses what can be admitted in issuing orders of protection - especially that the judge doesn't have to allow the abuser to disparage the victim in court.

Section 8, 46-6-311, MCA, is the primary aggressor statute. Currently it can happen that we can't determine who the primary aggressor is, and both have been arrested. So, the bill gives some direction/guidance in arresting the primary aggressor. This was thoroughly addressed in the House and gives room for officer discretion.

Section 10 pertains to advocate privilege, and allows confidentiality so the victim feels freer to call for help. The last section allows for a treatment and family fund account for shelters. These shelters are a breath of fresh air, and do good for these victims who have nowhere else to go. So, these shelters are in dire need of funding.

Proponents' Testimony: Judy Wang, Assistant City Attorney, Missoula, and for Fred Unmark, Warren Little, Diane Trip, Karen Oraick, and Matthew Robinson (EXHIBIT 2). I have also been a prosecutor in Missoula the past ten years and have done many domestic violence cases. The primary aggressor section gives discretionary guidelines when both parties allege aggression, as the law is now unclear.

The victim has the privilege of confidentiality concerning information shared with a shelter worker, but can waive this privilege. If the victim dies, confidentiality is waived. This is similar to the rape shield law, and we are asking that the same language be applicable to civil hearings.

Shelter funding would come form a divorce surcharge, and would be disbursed by the Department of Public Health and Human Services (DPHHS). There was a housekeeping amendment to the "no bail" statute that aggravated and felony assault also be a no bail offense, and that old abuse convictions would remain even though this act has been renamed.

I have letters from Fred Unmark, Dawson County Attorney, Warren Little, a retired attorney in Missoula, Diane Trip, Karen Oriack, and Matthew Robinson.

{Tape: 1; Side: B; Approx. Time Count: #20.0; Comments: 10:10 a.m.}

John Conner, Department of Justice (EXHIBIT #2a). This seems to be the "crime de jour". In homicide we don't have to prove motive, and often it seems there is no motive in domestic violence cases. I could see violence in a man as he talked about his wife being a wonderful person, yet he was the primary aggressor.

Michelle Doyle, Montana Law Enforcement Academy (MLEA) read from prepared testimony **(EXHIBIT #3).** I teach the domestic violence training program at MLEA.

Robert Heinle, Missoula Police Department read from prepared testimony **(EXHIBIT #4).** I have been on street patrol for six years. We had a case where a man took all but $10 following a verbal confrontation with a woman. He left and the woman found him in a casino and told him to move out. She went and packed his things, then took it to where he was passed out in his vehicle. He awoke and threatened her, and she slapped him. Then he hit her in the back of the head with force sufficient to knock her down on her pregnant stomach, causing false labor. The police officer arrested the man as the primary aggressor, although he didn't think it was right, nor did the city attorney and the arrested man. We ask your support to make this legislation more fair.

Betty Waddell, Montana Association of Churches. She rose in support of HB 343 and urged passage of the bill.

Kathy Sewell, Public Outreach Coordinator, Montana Coalition Against Domestic Violence (EXHIBIT #4a). We have a program in 53 of 56 counties and on all Indian reservations, 20 safe homes, 11 shelters and 2 trainers in Montana . We also have served more than 170 battered men in the past year. The proposed changes will help. Choking gets used a lot as it gives complete control of the victim, and the victim always fights back against choking.

Kelly Slattery-Robinson, Missoula YWCA (EXHIBIT #5). Victim privilege of confidential information is very essential to keep, even though many working in this field don't have counseling degrees, and are volunteers. Although the target is usually just the victim, we would also like to keep shelter locations and worker names confidential. Many crisis-line shelters are understaffed, and Missoula is the only one with a specially trained and paid children's advocate.

Gene Kiser, Montana Board of Crime Control. We support this legislation.

Kate Cholewa, Montana Women's Lobby. We support this legislation.

Sharon Hoff, Montana Catholic Conference. We support this legislation.

Mike McGrath, Lewis and Clark County Attorney, President, Montana County Attorneys, and Vice President, Board of Friendship Center, Helena. We support this bill.

Laurie Koutnik, Montana Christian Coalition. We support this legislation.

Opponents' Testimony: None

Questions From Committee Members and Responses: **SEN. BRUCE CRIPPEN.** I have a letter from a Missoula Deputy City Attorney in opposition to this bill. **Judy Wang.** I haven't seen the letter, and he hasn't shared his thoughts with me.

SEN. CRIPPEN. It's about the possibility of arrest of the larger of the two aggressors where both have been hurt. **Judy Wang.** Officers look at this, but it isn't the determining factor or the only one. We're not asking for gender factor, but for officers to use the same judgement as in other assault situations.

{Tape: 2; Side: A; Approx. Time Count: #00.; Comments: None.}

SEN. ESTRADA. Are there any other situations requiring defendants to go to jail without bail? I'm looking at the title and page 9. **John Conner.** I believe it's in 46-9-302, MCA.

SEN. ESTRADA. Are people posting bail with the arresting officer now? **John Conner.** If you look at Section 7 of the third reading copy, it says "must first appear before the judge before being released for any assault". So, it is a clarification rather than a change.

SEN. HOLDEN. Concerning the $30 fee on page 2, the state would essentially collect this for a treatment fund. Do we have a statewide assault treatment program now? **REP. GRIMES.** This would be the creation of a new trust fund.

SEN. HOLDEN. How do you envision helping all of Montana, including rural areas? **REP. GRIMES.** A lot of cases do occur in rural areas, and these would probably be referred to friendship centers in urban areas. **Kathy Sewell.** The handout explains the DPHHS program of about $346,000, of which $200,000 is federal money, $111,000 is general fund money, and $35,000 is state special revenue from fines and court fees. Right now, it funds about 20 programs across the state, but we have 35 programs. The newest is in Glasgow, and is all volunteer right now, so these dollars would help in these situations.

SEN. HOLDEN. How will you cover these temporary orders of protection on page 4? I am asking that you contact the Dawson County Attorney as to why he thinks this bill is good. **Kathy Sewell.** SB 54, by the Montana Board of Crime Control, works on that issue, and so we left it with them.

SEN. ESTRADA. How will this bill affect the Gateway House in Billings? **Kathy Sewell.** The DPHHS already has the requests for proposal (RFPs) going out now to handle the extra funding through the current domestic violence area of the Department. The average cost per program is about $16,000 per year.

SEN. ESTRADA. In Billings we have domestic violence crisis lines and shelters. **Kathy Sewell.** They access the money as well as anyone else does.

VICE CHAIRMAN LORENTS GROSFIELD. I question the language concerning the officer determining the primary aggressor when they receive a complaint from more than one person. What does that mean? Do both husband and wife have to call in separately? **Robert Heinle.** For example, if both are fighting and both are injured, we separate them, and take separate statements to try to ascertain the truth. No arrest were made in one case, but the female should have been arrested as primary aggressor. This was called in by a neighbor.

VICE CHAIRMAN GROSFIELD. The language says the complaint must come from a family members. Is that what you want it to say?

Robert Heinle. If you read further down it says, "based on evidence available", so I don't see where it eliminates me from including the primary aggressor.

VICE CHAIRMAN GROSFIELD. Does Section 8 only apply to employees and volunteers of shelters and crisis lines, and not the first call to the police station? **Kathy Sewell.** Yes.

VICE CHAIRMAN GROSFIELD. Will **SEN. NELSON** carry this bill? **REP. GRIMES.** Yes.

VICE CHAIRMAN GROSFIELD. We had an earlier bill pointing at how much a disaster this section of law is. How was this received in the House? **REP. GRIMES.** We did discuss this. The issue of why we're assessing a fee came up, and it was generally concluded that "where else would we apply the fee, if not here?" I believe the House thought the $30 fee to be legitimate. I do understand your concerns.

VICE CHAIRMAN GROSFIELD. The policy issue is, do these fees directly relate to the program being funded? I believe it is a bit of a stretch.

Closing by Sponsor: **REP. GRIMES.** I want to thank the Committee for a good hearing. Many families with kids have been assisted by this program. This is a victim's rights bill.

{Tape: 2; Side: A; Approx. Time Count: #24.4; Comments: 10:52 a.m.}

In the House we addressed the primary aggressor. A representative said his brother was chased by his wife with a kitchen knife, so the brother grabbed her wrists which resulted in bruises to her, and he was arrested, too. We can also include statements by witnesses.

I have the same opinion of earmarking you have, so we have looked at other alternatives, but couldn't seem to find one. The shelters need funds, and there were 700-plus actual convictions occurring in Montana last year. It is essential and cost-effective to have a minimum level of support in these shelters, so I asked you to discuss that issue as severable from the rest of the bill.

SEN. CRIPPEN RESUMED THE CHAIR AT THIS POINT IN THE HEARINGS.

{Tape: 2; Side: A; Approx. Time Count: #29.5; Comments: 10:57 a.m.}

HEARING ON HB 325

Sponsor: **REP. MATT BRAINARD, HD 62, Missoula**

Proponents: **REP. DEB KOTTEL, as a citizen**

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3-10 97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
AL BISHOP	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
WALT MC NUTT	✓		
LORENTS GROSFIELD, VICE CHAIRMAN	✓		
BRUCE CRIPPEN, CHAIRMAN	✓		

SEN:1995
wp.rollcall.man
CS-09

3-10-97
HB 343
SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 3-10-97
BILL NO. HB 343

To: Honorable Chairman Bruce Crippen and Members of the Senate Judiciary Committee
From: Judy Wang, Assistant City Attorney for Missoula
Dated: March 10, 1997
Re: House Bill 343

Primary Aggressor § 46-6-311

As Montana law is presently written, peace officers may have a difficult time sorting through complaints of mutual aggression when they respond to a domestic violence call. In three calls that were recently received by the City of Missoula, all involving mutual violence, all three calls were handled differently. All three calls involved violence from both parties. In two calls the male party was the more significant aggressor. In one call the female half was the more significant aggressor. In one call, no one was arrested. In one call the male half was arrested. In one call both were arrested. This amendment would lessen the confusion of a domestic violence investigation when there are allegations of mutual violence.

Under the proposal, officers shall evaluate a domestic violence call when there is an allegation of mutual violence and determine who is the primary aggressor. The officer may arrest the primary aggressor only. The amended statute gives officers the tools to make this decision. This proposal was drafted by a committee of people including several sheriff's deputies and city police officers.

Victim Advocate Privilege § 8

When a victim calls for help from a shelter or crisis line the victim should have a privilege in what the victim tells the advocate or crisis line worker. Under current Montana law shelter and crisis line workers can have their records subpoenaed, be subpoenaed themselves and may be required to tell the offenders divorce lawyer or a court what the victim said. This section gives the victim a privilege in those conversations. If the victim dies, the privilege dies with the victim.

Rape Victims Privacy Rights at TOP Hearings § 40-15-202

Under current Montana law, a rape victim can obtain a Temporary Order of Protection from the rapist. Under current law, the rapist has no limits on his ability to bring up information about the victim's sexual conduct at the hearing on the Order of Protection. This section incorporates Montana's rape shield laws into the Order of Protection statutes. Information about the victims sexual conduct, other than what is at issue in the hearing, cannot be presented unless the judge reviews the proposed information before the hearing and judge rules that it is admissible.

Shelter Funding § 25-1-201 and § 9

Domestic Violence Shelters and Crisis lines in Montana have very limited funding. This proposal adds an additional $30 fee on divorce filings with the funding to be distributed by

the Department of Public Health and Human Services to shelters and crisis lines with the greatest needs. Shelters and crisis lines that provide the best services and those agencies with the best prevention programs will recieve funding from this source.

Housekeeping

Current Montana law states that a misdemeanor partner or family member assault is a no bail offense. If a felony or aggravated assault is committed on the same partner or family member, the no bail provision does not apply. This proposal clarifies that section so that any assault on a partner or family member is a no bail offense. Mont. Code Ann. §46-9-302. H.B. 343 clarifies Montana law to clearly state that an Order of Protection issued under pre-1995 law or a domestic violence conviction under pre-1995 law is still effective, despite the 1995 name changes. §§ 40-4-121, 45-5-206. An order of Protection that is appealed to an appellate court continues in effect until it is modified by the appeal court. § 40-15-302.

Summary

House Bill 343 encourages peace officers to look for the primary aggressor if both people involved in a domestic violence call have been violent. Under this bill officers will have the tools to make that evaluation and officers will have additional help to determine whether only the primary aggressor should be arrested. This bill gives a privilege to victims in their discussions with domestic violence shelters. House bill 343 reduces the possibility that a rape victims sexual history can be brought out at the hearing when the victim requests an Order of Protection from the rapist. Under this bill an additional charge on divorce filings will go to fund domestic violence shelters and crisis lines. House Bill 343 clarifies several housekeeping issues.

Please vote for House Bill 343 as it has been amended prior to the committee hearing.

WARREN L. "DITE" LITTLE
8127 HELLGATE STATION
MISSOULA, MONTANA 59807

2/9/97

Dear Sen. Bruce Crippen & members of Judiciary committee,

I'm a 66 year old retired attorney, who limits his practice to part time cases involving battered women, & want to lobby for the passage of H.B. 343.

I was most pleased to see the progress made in the 95 Legislative session in changing number of the loopholes in this area and I consider HB 343 a further effort in this area.

The statute needs to be specific so the judge will frequently allow as much latitude in the testimony that the victim is victimized again.

We have seen a few cases, at least, every weekend it has been that way for the past two years that I have been exposed to these cases. This is a real problem. Some of these cowards are very dangerous felons from other states, that come to Montana to further isolate their spouse or girl friend.

The last 2 men drivers who was arrested in the death of a young woman last week in Missoula was a man I obtained an order of protection against in 1994 & 1995. There is great need for your action in 1997. Thank you,

Warren Little

MISSOULA COUNTY MC
Missoula County Victim Assistance Program
CRIME VICTIM ADVOCATE
200 W. Broadway St. • Missoula, MT 59802-4292
(406) 523-4630
MISSOULA

January 31, 1997

Honorable Chairman Bob Clark and Members of the House:

I am the Crime Victim Advocate for the City and County of Missoula and I am here to testify for House Bill 343. In a three month period I may see or speak to over 200 individuals; 80% or more are victims of a crime. Most of these crimes are of a violent personal nature, such as partner assault, rape, sexual assault or incest. I am here to talk about victims of sexual assault and rape.

Most sexual assault and rape victims I have seen are women. One of my duties is to help them obtain a Temporary Order of Protection, a civil court order which orders one person, a Respondent, to stay away from another, the Petitioner, who feels threatened by them. A victim first appears before the judge to explain why he or she is requesting the Temporary Order of Protection. She tells her story at this time. If the judge determines that the woman believes she is in danger from the person who sexually assaulted or raped her, the judge will grants the temporary order. Within twenty days a hearing is set to determine whether to continue the order or not.

These hearings are remarkable. Often the victim is terrified. A woman who has been sexually assaulted or raped is again victimized, only this time it is by the judicial system. In a criminal trial, ideally, the existing rape shield law will protect the victim by not allowing any testimony as to her past sexual behavior. In these civil cases, there is no rape shield law. Let us remember that at this hearing she is requesting an Order of Protection. The matter at hand is her current safety, not her past sexual behavior. We need to extend the rape shield law to include these civil cases.

Again, an Order of Protection simply orders a Respondent to stay away from the Petitioner, to not contact her, to not harass her, to stay away from her home and/or her work. A criminal trial may not occur for years, or possibly not occur at all. This civil order is a necessary protective effort by the courts addressing the safety and well-being of the victim. The rape shield law needs to cover these civil orders.

In this matter, we can all be Crime Victim Advocates, and vote to support HB 343. Thank you for your time and attention.

Sincerely yours,

Karen A. Orzech

1525 Winchester Court
Missoula, Mt. 59804

Dear Chairman Crippin and Distinguished
Members of the Senate Judiciary Committee,

I am writing this letter in support of H.B. 343. This piece of legislation introduced by Representative Duane Grimes recently passed in the House by an overwhelming majority. It is intended to clarify several different aspects of the domestic violence law and to address several issues that have arisen.

The first concern was that any person who has committed and been convicted of a domestic violence attack, whether it was called domestic abuse or partner or family member assault, be credited with a prior conviction for that offense.

As presently written, offenders who commit partner or family member assault must go to jail without bail, but if they commit felony assault on that same partner or family member, they could be released on bail. This legislation assures that no bail applies to any type of assault committed against a partner or family member.

The 1995 Legislature gave rape victims the right to get an Order of Protection against the person who raped them. This legislation would give the victim the same right to privacy concerning his/her sex life at the Order of Protection hearing as he/she would have at a criminal trial.

This legislation creates an advocate confidentiality statute similar to a counselor/client privelege. It would prevent shelter workers and crisis line volunteers from having to reveal information about a victim unless he/she requests it.

The primary aggressor section is intended to help law enforcement officers at a domestic violence incident determine who was the main, or primary, person inflicting the assault and who was acting in self defense. Its purpose is to assist the officer in determining who should be arrested.

Because of the very nature of domestic violence, it is imperative that victims and their children are able to seek information and shelter outside of the home. Although domestic violence shelters and crisis lines are often working at full capacity, they are notoriously under funded and under staffed. To ensure that these much needed services are available to victims, a consistent source of revenue is necessary. A small increase in the divorce filing fee could raise necessary funds to help provide basic services. Although all divorces do not involve domestic violence, few are free from emotional and psychological abuse. Consequently, this area seemed like an appropriate source to aid in funding.
Domestic violence is an escalating problem in our society. It has no income or social boundries. It is a nonpartisan issue. Reducing and preventing domestic violence requires strong public policy which begins with appropriate legislation. I urge you to support H.B. 343, it substantially strengthens our efforts to address and prevent domestic violence.

Thank you for your consideration,
Sincerely,

Diane M. Tripp
Montana Victim's Advocate

– DAWSON COUNTY ATTORNEY –

215 SO. KENDRICK • P.O. BOX 1307
GLENDIVE, MONTANA 59330
(406) 365-2532 • FAX: (406) 365-6401

January 21, 1996

Judith L. Wang
Chair Legislative Committee
Missoula Family Violence Counsel
P.O. Box 2545
Missoula, MT 59806

RE: Domestic Violence Legislation for 1997

Dear Ms. Wang:

I have reviewed the draft copy of proposed legislation to make some minor changes in domestic violence statutes. I approve and concur with the proposed changes. Poorer people are often excluded from the protection of law. I see the proposed changes as a big step forward to correct that problem.

Please use my letter as unqualified support for the proposal. I will be happy to testify in Helena in support of the legislation if needed and if my schedule permits.

Sincerely,

CHARLES FREDERICK UNMACK
Deputy Dawson County Attorney

CFU/jvo

ANDERSEN, ROBERTSON & STEVENS, P.L.L.P.

ATTORNEYS AT LAW

a Professional Limited Liability Partnership

Matthew Anderson-Robertson

2505 S. Russell Street, Suite 300
Missoula, MT 59801

Telephone: 543-0750
Fax: 543-0752
Email: kent@montana.com

Carolyn J. Stevens
Marie A. Andersen

January 30, 1997

Karen Orzech
Crime Victim Advocate
City Hall
Missoula, MT 59801

RE: Proposed Changes in the Order of Protection Statute

Dear Karen:

I have reviewed the fax of the proposed changes in the Order of Protection Statute. I feel that these changes will substantially improve the law for women or men who attempt to obtain an order.

I recall a case where I represented a woman who alleged sexual intercourse without consent as a basis for an Order of Protection. In that case, the respondent was allowed to present evidence of past sexual relations and to present notes allegedly written by the petitioner to persuade the judge that she did not deserve an order of protection. I argued that these items of past sexual conduct did not indicate that the complaint alleged was a permissive act. The petitioner testified that the sexual contact was without consent and that he persisted several times in forcing himself upon her. If the changes in the statute had been in effect prior to this hearing, the respondent would not have been able to present the evidence of past sexual relations and notes regarding prior encounters to the judge. I believe that without this evidence, the respondent would have been ordered to stay away from my client, the petitioner.

Since my client's Petition for an Order of Protection was denied, my client has relocated to a new confidential address so that the respondent no longer knows where she lives. She still lives in fear of this respondent and continues to receive counseling.

Thank you for bringing this development to my attention.

Sincerely,

Matthew Anderson-Robertson

January 29, 1997

Honorable Bob Clark
Chair, House Judiciary Committee
Montana Legislature
Helena, Montana

Re: **HB 343, Domestic Violence Act Revisions**

Dear Chairman Clark:

I am writing to express my support for HB 343, which adds several provisions to the Domestic Violence Act. Throughout my career, first as a social worker and then as a lawyer, I have worked with many women who have been victims of domestic assault. As you are aware, this is a very serious problem in our state and in our country. The proposed revisions to the Domestic Violence Act further strengthen Montana's statute, and are important measures designed to assist victims of domestic assault and to protect those who have been assaulted.

Several significant revisions deserve emphasis. First, when there have been complaints of violence from more than one family member or partner, the revisions permit the police officer to evaluate the complaints separately and to identify and arrest the primary aggressor. This provision enables the officer to make an arrest of the primary aggressor only, and thereby protect against further violence.

Second, the revisions provide that evidence concerning a victim's sexual conduct is not admissible in an Order of Protection hearing. This provision protects the privacy of the victim and avoids the introduction of extraneous and irrelevant evidence at the hearing.

Third, these changes would keep confidential communications between victims of domestic assault and advocates. This change will encourage victims to seek assistance from service providers and take steps to avoid situations likely to result in future violence.

Finally, the legislation provides for a filing fee surcharge in divorce cases, providing that the additional funds generated will be used for additional shelter facilities and crisis lines. This provision creates an additional source of revenue for addressing this social problem, protecting against further violence, and ensuring the safety of victims.

Thank you for your attention to these issues, and I urge your support of HB 343.

Very truly yours,

Mary Helen McNeal, Esquire

WLC Women's Law Caucus

University of Montana School of Law

To: House Judiciary Committee
From: Women's Law Caucus Legislative Committee and Concerned Law Students
Re: HB 343
Date: January 31, 1997

This letter is in support of the HB 343 that would revise the laws of Montana relating to domestic violence. The proposed changes are essential if we are to remove the barriers a victim of domestic violence faces in taking action against their partner. Any changes that make such action easier for the abused partner are essential to Montana's fight against domestic violence.

The proposed amendment to 46-6-311 would allow a peace officer to evaluate complaints by more than one family member or partner and upon that evaluation arrest only the primary aggressor. It is crucial that the law punish the person who deserves punishment. The amendment would help insure that the primary aggressor is the one who is arrested and that the victim is not discouraged from making a call for help to law enforcement.

The rape shield provision suggestion in 40-15-202 for hearings concerning temporary orders of protection (TOP) is fundamental. Evidence of a victim's sexual conduct is totally irrelevant and prejudicial in a hearing for a TOP. It is important to encourage victims of domestic violence to pursue the avenues the law provides to them for help. Permitting the introduction of evidence of a victim's sexual conduct acts as a deterrence for a victim seeking a TOP.

Finally, I cannot overemphasize the importance of additional funding for battered women's shelters. Looking particularly at Missoula County, it is extremely difficult for victims to leave their aggressor because of financial concerns. To move to an apartment on their own a victim is facing an immediate payment of at least $800. If there are children involved, it becomes even more difficult and costly. Additional funding for shelters is fundamental to encourage victims to leave their aggressor and begin a life that is free from domestic violence. Without the intermediary help from shelters, this would not be possible for many victims.

Sincerely,

Abi Sheppard
WLC Legislative Chair

University of Montana • School of Law • Missoula, Montana 59812 • (406) 243-4311

WLC Women's Law Caucus

University of Montana School of Law

Matthew Hafferkamp, SBA CLASS REP.

M. Kennedy

David Sandler

Heather Latino

Matthew C. Claus

Patrick Lin

Ken Connors

Erika Johnson

Brenda Lindlief-Hall

Chris S. Imus, SBA President

Alicia Mackey Eagan

Rick D. Lamb

Robert Sioja

Jeff A. Turner

Aimee Grenfell

Tamara J. Driscoll

Peter Bowler

Amber Godbout

SBA Vice-President

Mark Hilario

Melissa Schlichting

Tomohisa Tsuboya

Angela Russell

Brian Upton

Ed Zink

WLC **Women's Law Caucus**

University of Montana School of Law

ABA Rep.

WLC mentor Contact

Cydnie Waldner

Pamela Bucy

Deborah Kiredaey

Miss Lillge-Lehman

Craig J. Harrington

Michael Paul Sirovo

Sally Weaver

Jennifer Bacon

Diana Lehman Edna Rankin Law Society

Diane Kleppe Coffee

Rebecca H. Pappi

Rachel Dilsaver

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Kelly Anderson
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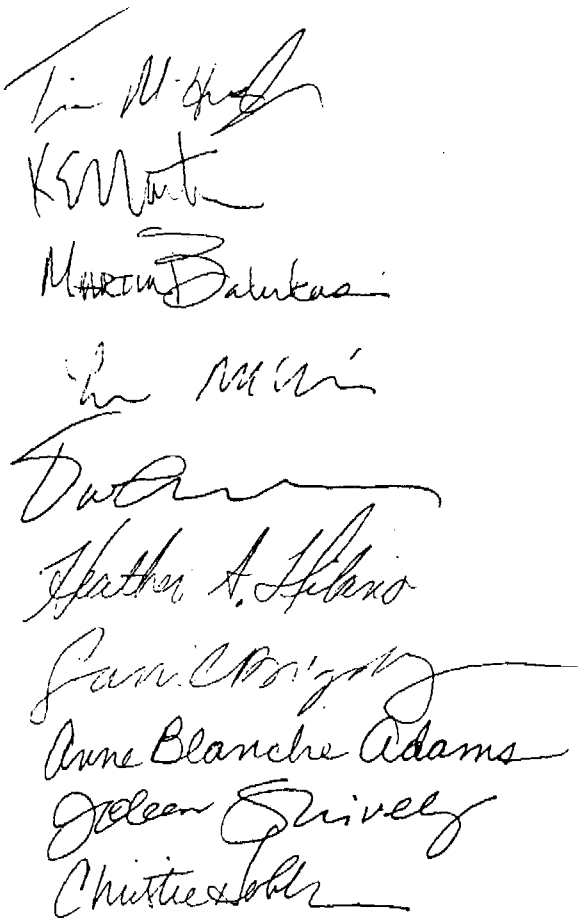
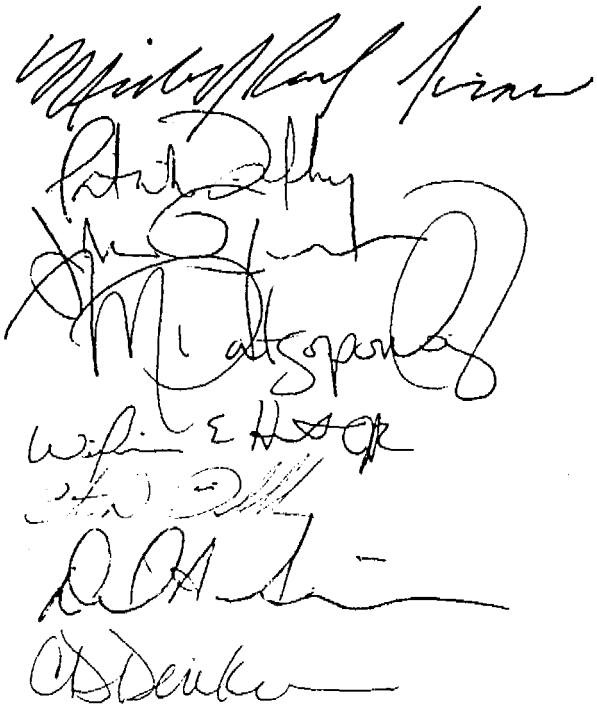
Sarah Bond
Ann F. Stunk
Melissa Hoffman
Tim Dick S.B.A. Rep.
Jolyn G. Eggart
Andy Harmon
Jennifer Slegle
Blair Gilbert
Matt Kull

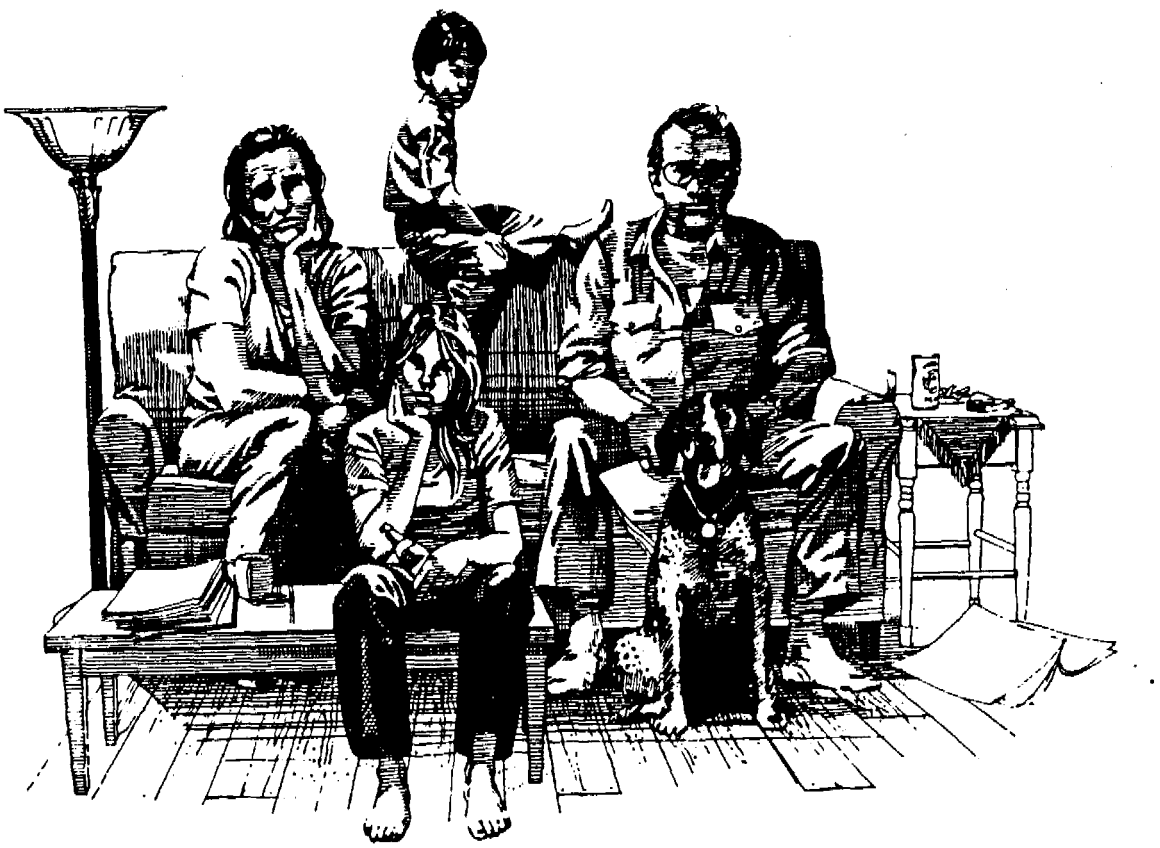




J. Connor

~~HB 343~~
SENATE JUDICIARY/~~JUDICIARY~~
EXHIBIT NO. 2a
DATE 3-10-97
BILL NO. HB 343

DOMESTIC VIOLENCE



MONTANA LAW ENFORCEMENT ACADEMY
2260 SIERRA ROAD EAST
HELENA, MONTANA 59602
(406) 458-2070

PRIMARY AGGRESSOR

In recent years, there has been an emphasis on the determination of the ***primary aggressor*** in domestic violence incidents. The primary aggressor is the most significant aggressor, and not necessarily the initial participant in the incident.

The identification of the primary aggressor is used to reduce the number of dual arrests when there appears to be two suspects and to avoid arresting the victims of domestic violence. Dual or mutual arrest occurs when more than one party is arrested.

It is currently believed that mutual arrests undermine the intent of domestic violence statutes, makes prosecution more difficult, and increases the likelihood that the case will be dismissed.

Some states have enacted statutes requiring officers to investigate, determine, and arrest only the primary aggressor. At the present time, Montana has no state law requiring that a primary aggressor be determined. While mutual arrests are not prohibited, and may be necessary in some cases, the responding officer(s) should make an attempt to investigate, identify, and arrest only the primary aggressor in Partner Or Family Member Assault.

In attempting to identify the primary aggressor, in what appears to be a mutual combat situation, law enforcement officers should consider the following:

PRIOR COMPLAINTS/HISTORY OF DOMESTIC VIOLENCE

- Officers can consider their own personal knowledge or experience of the history of abuse involving the same victim/suspect.
- Record of any prior incidents (such as prior arrests,etc.)
- Record of any temporary orders of protection or orders of protection on file.
- A history of abuse related by one or both parties, including any prior orders of protection.
- Medical documentation of past injuries due to abuse.
- Other witnesses confirm a past history of abuse (such as children, friends, neighbors, etc.).
- Violence in another relationship or other violent acts in general.

THE RELATIVE SEVERITY OF INJURIES

- Compare the extent of injuries on the involved parties including complaints of pain.

- What is the proportional nature of the mutual injuries?
  - A scratch vs. a broken arm
  - A push vs. a black eye
  - verbal abuse vs. threats and physical abuse

NOTE- Officers should be aware that there may be non-visible injuries from kicks/punches etc. which have not resulted in bruising at the scene.

SERIOUS THREATS CREATING FEAR OF PHYSICAL INJURY

- One party shows signs they are in fear of the other while the other party shows a lack of fear.

- Consider the demeanor of the parties:
  - Evidence of fear
    - -Crying
    - -Hysterical
    - -Nervous
    - -Disoriented/Confused
    - -Apologetic

  - Evidence of lack of fear
    - -Calm
    - -Threatening
    - -Controlling

NOTE- Officers should keep in mind that in some cases, a victim's reactions may be affected by the presence of law enforcement on the scene. Once officers arrive on the scene, some victims may feel they have protection and will take the opportunity to lash out at the suspect. It may appear initially that the victim who may be hysterical, is the suspect, while the suspect, who may appear calm, is the victim. The officers arrival on the scene may shift the victim's priorities from one of fear of assault and concern for their personal safety, to other concerns such as retaliation, children, etc.

THE LIKELIHOOD OF FUTURE INJURY TO EACH PERSON

- The size relationship between the parties.

- The prior history of abuse between the parties.

■Threats of future violence made by one party against the other.

DID ONE PARTY ACT IN SELF DEFENSE

■Do the injuries appear to be obtained in defense against the other party?

■Are the injuries consistent with the person's statements and the evidence at the scene?

■offensive vs. defensive wounds
The following injuries are common in self defense cases and should warrant further investigation:
- •Bite marks on the chest, biceps and forearms.
- •Scratches on the face, chest or neck. (Women often use their fingernails as weapons in defending themselves)

■Refer to MCA 45-3-102 and MCA 45-3-105
Self defense should be considered when a person uses force against another when he/she reasonably believes that it was necessary for defense against another's imminent use of unlawful force.

45-3-102. **USE OF FORCE IN DEFENSE OF PERSON.** A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or serious bodily harm to himself or another or to prevent imminent death or serious bodily harm to himself or another or to prevent the commission of a forcible felony.

45-3-105. **USE OF FORCE BY AGGRESSOR.** The justification described in 45-3-102 through 45-3-104 is not available to a person who:

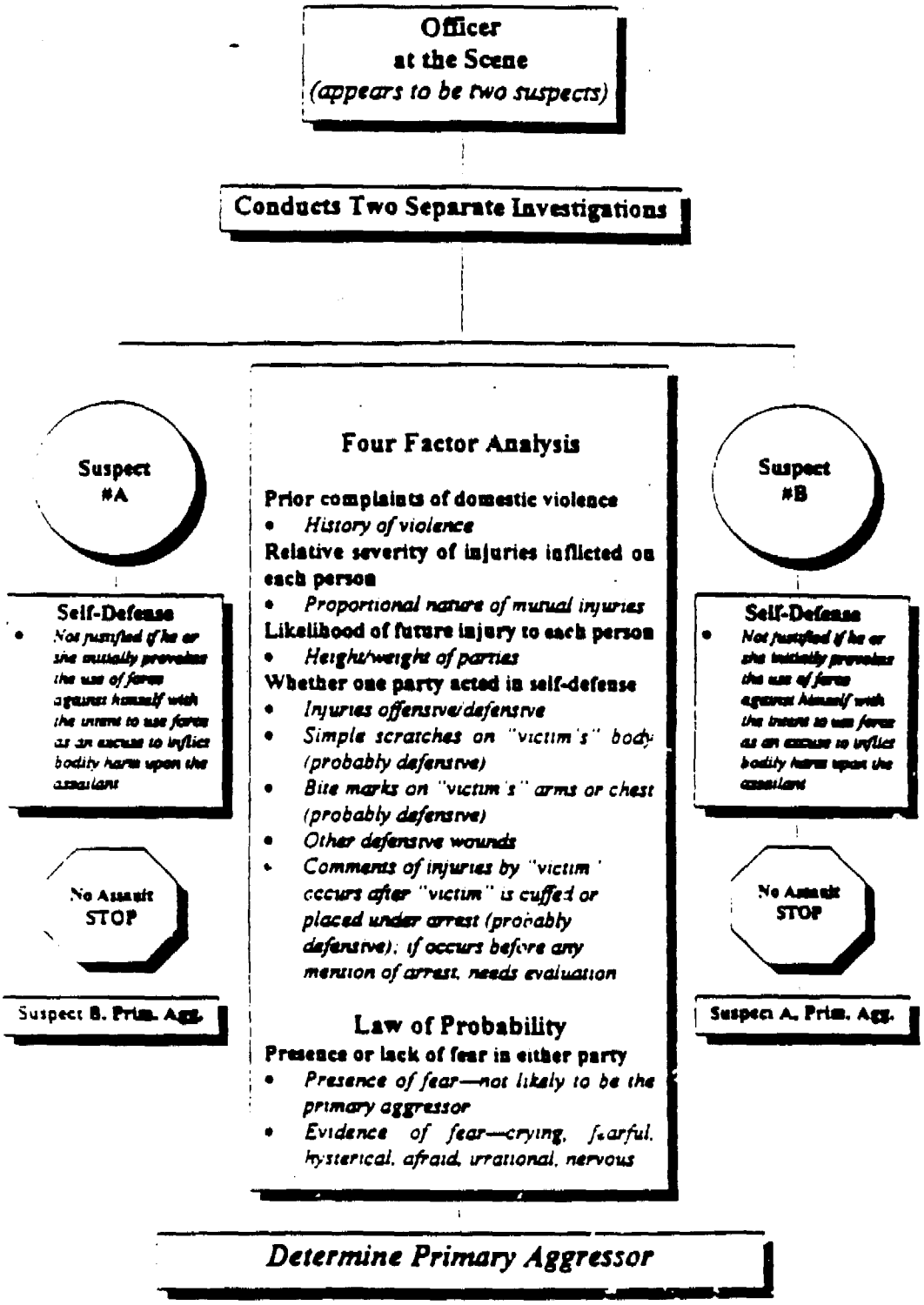
(1) is attempting to commit, committing, or escaping after the commission of a forcible felony; or

(2) purposely or knowingly provokes the use of force against himself, unless:

(a) such force is so great that he reasonably believes that he is in imminent danger of death or serious bodily harm and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or serious bodily harm to the assailant; or

(b) in good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force but the assailant continues or resumes the use of force.

PRIMARY AGGRESSOR ANALYSIS


Officer
at the Scene
(appears to be two suspects)
Conducts Two Separate Investigations
Suspect
#A
Suspect
#B
Four Factor Analysis
Prior complaints of domestic violence
• History of violence
Relative severity of injuries inflicted on each person
• Proportional nature of mutual injuries
Likelihood of future injury to each person
• Height/weight of parties
Whether one party acted in self-defense
• Injuries offensive/defensive
• Simple scratches on "victim's" body (probably defensive)
• Bite marks on "victim's" arms or chest (probably defensive)
• Other defensive wounds
• Comments of injuries by "victim" occurs after "victim" is cuffed or placed under arrest (probably defensive); if occurs before any mention of arrest, needs evaluation
Law of Probability
Presence or lack of fear in either party
• Presence of fear—not likely to be the primary aggressor
• Evidence of fear—crying, fearful, hysterical, afraid, irrational, nervous
Self-Defense
• Not justified if he or she initially provokes the use of force against himself with the intent to use force as an excuse to inflict bodily harm upon the assailant
Self-Defense
• Not justified if he or she initially provokes the use of force against himself with the intent to use force as an excuse to inflict bodily harm upon the assailant
No Assault
STOP
No Assault
STOP
Suspect B. Prim. Agg.
Suspect A. Prim. Agg.
Determine Primary Aggressor

Adopted from "Domestic Violence 101", Utah Prosecution Council, Salt Lake City, Utah, July 1, 1996.

EFFECTING THE ARREST

After conducting the investigation and interviews, the officers should compare the separate statements made by the parties and witnesses and consider the evidence. If probable cause exists, an arrest should be made.

- Plan the arrest to avoid interference by the victim or the other parties. Do not lose sight of them.
- Arrest should be made outside the presence of the victim, other parties, and children when possible.
- If possible, have the victim , other parties, and children remain in a separate room.
- Arrest and handcuff the offender.
- The decision to arrest is made by the officer. Tell the offender that the decision to arrest is made by the officer, not the victim, and any opposition the victim has to the arrest is not a factor in the decision.
- Give the offender Miranda warnings if there will be a custodial interrogation.
- Advise the offender that he/she cannot be released until first appearing before a judge.(If arrest is for PFMA or Stalking)
- Remove the suspect from the location and secure them in the patrol unit pending transportation.

~~3-10-97~~

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 3-10-97
BILL NO. HB343

To Bruce Crippen and Honorable Members of the Senate Judiciary Committee:

From: Michelle Doyle, Training Officer for Domestic Violence and Violence Against Women Programs at the Montana Law Enforcement Academy

Re: House Bill 343

Dated: March 10,1997

House Bill 343 proposes enactment of legislation dealing with the determination of the primary aggressor in Partner or Family Member Assault incidents. The determination of the primary aggressor is used to reduce dual arrests and to assist in avoiding the arrest of the victims of domestic violence. Law enforcement officers responding to a domestic violence incident would investigate, attempt to identify and arrest only the primary aggressor involved in the incident.

The determination of the primary aggressor is one of the topics of instruction in the domestic violence curriculum developed by myself and Caroline Canavan at the Montana Law Enforcement Academy. We are currently teaching this curriculum to MLEA Basic cadets as well as at 8 hour training sessions conducted at various communities throughout the state.

The proposed legislation appears to be consistent with the material developed in our curriculum with regard to this topic. The determination of the primary aggressor could be an effective tool for law enforcement officers when dealing with difficult situations where the victim may be involved in the incident in a defensive manner. The Arrest of the primary aggressor would provide a more effective intervention in domestic violence incidents as it would hold the offenders who are most responsible for the abuse in the family accountable for their behavior. The proposed legislation could be used effectively by law enforcement officers during their investigation of a Partner or Family Member Assault incident when they are presented with what appears to be a mutual combat situation and where the victim may have inflicted injuries on the other party in self defense.

Sincerely,

Michelle Doyle

Michelle Doyle
Training Officer

CITY OF MISSOULA
POLICE DEPARTMENT

"Professionalism With Pride"

~~3-10-97~~

~~SENATE JUDICIARY COMMITTEE~~ ~~HB343~~
EXHIBIT NO. 4 Ex
DATE 3-10-97
~~BILL NO.~~ HB343

DATE: 03-10-97

To: Honorable Chairman Bruce Crippen and Honorable Members of the Senate Judiciary Committee

Thank you for your time and consideration on this Bill. I am speaking in support of House Bill 343. More specifically, I am speaking in support of the language in regards to the "Primary Aggressor".

I have been a police officer for the City of Missoula for 6 years. I have worked as a patrol officer for the entire time. In this time, I have investigated numerous partner assault cases. In all of these cases, I have identified and arrested the primary aggressor (based on the appropriate probable cause). Because family violence is a unique problem with its own special dynamics, it is sometimes very difficult to determine who is the primary aggressor. However, when the evidence is available to make the determination, it would be very advantageous to have primary aggressor language in the law to facilitate officer's decisions and actions.

Because of the dynamics of family violence, sometimes the first aggressor may not be the primary aggressor. The abused may be doing what ever they need to do to survive, this may even include being the first one to resort to physical contact. Even in my department, where we are very pro-active towards family violence, there are times when arrests are not made, or are incorrectly made because officers are unsure of the interpretation of the law. By having the primary aggressor defined as part of the partner assault statute, you would be giving me and my fellow officers another tool to use in making these very difficult decisions. In areas where departments are not as pro-active, you may be providing them with the added criteria to act accordingly. You would also be giving us support of our decisions later on in trial. Even more important, you will be protecting those who need our protection the most, the victims.

To summarize, the wording of "primary aggressor" is already part of our investigations. However, it is not specially addressed in the law and this has led to mistakes in the investigations and subsequent arrests by officers in the area of partner assault. This leads to the victim being victimized yet again by the system.

Sincerely,

Robert J. Heinle
Patrol Officer City of Missoula

435 RYMAN
PHONE (406) 523-4777
MISSOULA, MT 59802-4297
FAX (406)728-6690

~~3-10-97~~
~~HB343~~
SENATE JUDICIARY COMMITTEE
EXHIBIT NO. Ex 49
DATE 3-10-97
BILL NO. HB343

Montana Coalition Against Domestic and Sexual Violence - Kathy Sewell
HB343 Testimony 3/10/97

Chairman Crippen, Members of the Committee, my name is Kathy Sewell and I am the Public Outreach Coordinator of the Montana Coalition Against Domestic and Sexual Violence. We are a coalition of direct service providers for families experiencing domestic violence. We have programs is 53 counties across the state, with 20 safe home programs and 11 shelters. The membership serve over 10,000 victims in the span of one year. Nearly 18,000 nights of shelter were provided to women and children desperately escaping the violence in their own homes.

The Coalition also provides on-going technical assistance and public education to the state of Montana. HB 343 addresses one the issues we are most often asked to explain about - the family member assault law. HB 343 provides the necessary tools to law enforcement to be able to differentiate between aggression and self-defense. In the majority of cases women victims of partner assault minimize their injuries and their experiences. Many of these women share with the program workers how the injuries occurred and how they attempted to defend themselves. The actions of the perpetrators of this crime are chosen sometimes because they are not easily proven or detected. Choking is one of the types of behaviors used by abusers on their victims. It is also the most common injury for battered women in which they are also arrested. It is human nature to defend yourself. Imagine that you live in fear and that the person you loves you the most grips you around the throat. As your life breath is cutoff, you do not think about the consequences of staying alive. You just response. Women are currently being arrested for having this human response.

The Coalition and it's membership work collaboratively with various entities to preserve the rights and safety of the families in Montana. The Montana Law Enforcement Academy, Montana Board of Crime Control and the Coalition are now providing basic training, advanced training and camera training to officers across Montana. This training provides for the most up-to-date information and techniques on how to deal with domestic issues. HB 343 provides the back up for the training that is now being administered.

On behalf of the Montana Coalition Against Domestic and Sexual Violence and the families experiencing domestic violence in their homes, I ask the you support the passage of this important bill, HB 343.

FACT SHEET PREPARED BY MONTANA COALITION AGAINST DOMESTIC AND SEXUAL VIOLENCE
Legislative Session 1997

Department of Health and Human Services
State of Montana
Domestic Violence Program

Program Description

The Domestic Violence Program provides funding for community-based projects which give victims of spousal abuse/ domestic violence moral support, assistance with emergency housing, and information about domestic violence laws and legal rights. The community based projects also make referrals to other agencies and contracts for additional assistance. For FY 97, the Domestic Violence Program contracted with 21 service providers statewide. Contracts are awarded competitively to private, not for profit agencies. Award decisions were made by agency staff and the Montana Coalition against Domestic and Sexual Violence.

Goals

- TO assist victims of family violence and their families in securing emergency food, shelter, and counseling.
- TO provide program participants with advocacy, education, assistance with legal, financial, and other crises, and referral to helping agencies.

Services Provided includes but is not limited to:

Emergency shelters, Safe Homes, Counseling, Advocacy, Education, Assistance with legal and financial crises, referrals and training for domestic violence service providers.

Budget and Funding

The Domestic Violence Program has both state and federal funding sources. Federal funding for this program is from the Family Violence Prevention and Services Act. State funding for the Domestic Violence Program during FY 96 & 97 includes $146,000 of State General Funds.

The 1987 Montana Legislature approved additional funds for this program from two state Special Revenue sources:

1. 1% of Justice Court Fines, penalties, forfeitures and fees and
2. 50% of fines imposed for domestic abuse except those collected by a Justice Court

The current level of federal allocation is $200,000 per year (at least 70% has to be allocated for emergency shelters). The following chart contains budget figures for FY94 through FY97.

	FY94	FY95	FY96	FY97
General Fund	111,000	111,000	111,000	111,000
State Special Revenue Fund	35,000	35,000	35,000	35,000
Federal Special Revenue	160,000	200,000	160,000	200,000
Total Funding Costs	306,000	346,000	306,000	346,000

The average allocation per program is between $14,571.43 and $16,476.19.

Fact Sheet Prepared by the Montana Coalition Against Domestic and Sexual Violence
Legislative Session 1997

National Statistics

Domestic Violence is the leading cause of serious injury to American women, more common than muggings and car crashes combined. (Surgeon General Public Health Source Book)

A woman is battered every 15 seconds in the U.S. (FBI Uniform Crime Reports)

Nearly half of all incidents of domestic violence against women discovered in the National Crime Survey (48%) were not reported to the police. (Bureau of Justice Statistics)

Violent youth are four times more likely to come from homes in which they witness domestic violence than are nonviolent youth. (American Journal of Psychiatry, Vol. 140)

Domestic Violence is repetitive in nature; about one in five women victimized by their spouse or ex-spouse reported that they have been a victim of at least three assaults in the last six months. (The National Crime Victimization Survey)

Women are most likely to be murdered when attempting to report abuse or to leave an abusive relationship. (When Battered Women Kill Browne)

Four women are killed every day in America by a husband or boyfriend. (Violence Update, Vol 1)

Montana Domestic Violence Programs report the following statistics for 1996:

Over 15,000 calls made to the various crisis lines/services
Over 4,000 personal contacts were made across the state
Over 900 women and 850 children were given shelter
Over 170 battered men were served
Over 18,000 nights of shelter were given to families

1,135 prevention education programs were given in the state
Over 15,000 people were educated about Domestic Violence

Over 500 volunteers serve the various programs

Over 1,515 calls were received regarding sexual violence

3,125 cases of partner violence were reported to law enforcement

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 3-10-97
BILL NO. HB 343

YWCA

1130 West Broadway
Missoula, MT 59802
Phone: (406) 543-6691
FAX: (406) 543-6777

March 10, 1997

Honorable Chairman Crippen and esteemed members of the Senator Judiciary Committee,

I am the Co-Coordinator of the YWCA Pathways program in Missoula, and write with eight years of D.V. experience. The numbers I share with you today are those of Missoula, but as past Co-Chair A of the Montana Coalition Against Domestic and Sexual Violence this story is repeated across the state.

Envision with me please the following: You are in charge of a household where as many as 250 residents will walk through your doors and stay more than 3500 days. You need to be able to provide food and clothing to these residents as many walk through the doors with just the clothes on their back. Then you need to make sure you have enough toilet paper, paper towels, laundry soap and various other sundry items to keep the house up and running. You have women who need to talk, and children who need to be held and told what has happened was not their fault. You need staff, trained advocates, children's advocates, night staff so that the house stays safe and supportive.

Then you have a 24 hour, 365-day crisis line, because as much as we would like domestic violence to take a break on the Holiday's it does not, so the doors stay open. On top of the 250 women and children you serve in the shelter another 600 victims, family and friends, call on the phone. They need an ear to hear them, they need education, they need to know that there is some place to go. Add support groups, educational presentations, fundraising and the overall paperwork it takes to run a 24-hour operation as well as that many of your Montana D.V. lines are also sexual assault lines and you have a glimpse of what it is like for shelter and safe home programs all over the state.

It is not unusual for programs to run with only 1 staff person and a handful of volunteers, 2 short years ago, Missoula had 2.5 staff people and 45 volunteers, and only until we assumed the services of another organization did our staff grow larger. And though 45 volunteers are wonderful it takes a part time person to keep volunteers trained, working shifts, and happy.

Many programs are understaffed and under funded. For example, we all know that to break the cycle of violence one needs to work with the children, but the Missoula shelter is the only shelter who can afford a specially trained children's advocate. As because of the expertise and hours needed to really work with children, the position is paid. If it was not for some special Missoula community support, we would not have this position.

Please support House Bill 343. We need to start to build a fund in Montana. A fund which supports our domestic and sexual violence programs whom every day, save lives and break the cycle of violence.

Sincerely,

Kelly Slattery-Robinson

Kelly Slattery-Robinson, Co-Coordinator

DATE 3-10 97

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB325, 343, 352

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Kathy Sewell	MT COALITION	343	X	
Kate Cholewa	MT Women's Lobby	343	X	
Sharon Doff	MT Cath Conf	343	X	
Dee Cubbit	Rep	—		
Russell B Hill	Mt Trial Lawyers	HB352 HB325		✓ ✓
Laurie Kaatrud	Christian Coalition	343	X	
Judy Jones	City Attorney MSO	343	X	
Kelly Stalcup-Robinson	Missoula YWCA	343	X	
Kamala Wubbe	self- FIAJA- Fully Informed Grand Jury Assn.	HB 325	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 3-10-97

SENATE COMMITTEE ON Sen. Judiciary

BILLS BEING HEARD TODAY: HB 325, 343, 352

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
John Connor	Dept of Justice	343	X	
"	"	325		X
GENE KISER	MBCC	343	X	
Greg Van Horssen	State Farm Ins.	352	X	
MIKE COLLINS	IMM	325	X	
Steve Hicks	self	325	X	
Roger Carey	self	352	X	
MIKE McGRATH	MT COUNTY ATTYS ASSN	325		X
"	"	343	X	
Matt Brainard	HD 62	352	✓	
BETTY WADDELL	MT ASSOC. OF CHURCHES	343	✓	
Robert Henle	Missoula Police Dept	343	✓	
[illegible]	[illegible]	343		
Tim Kuntz	MT. Trial Lawyers Assc.	352		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 11, 1997, at 8:05 A.M., in Senate Judiciary Room, Room 325.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: Sen. Ric Holden

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 44, March 4
HB 65, March 4
HB 339, March 4
Executive Action: HB 343, HB 352, HB 65, HB 68, HB 325, HB 339

EXECUTIVE ACTION ON HB 343

Amendments: hb034302.avl - **EXHIBIT 1**

Motion: **SEN. LORENTS GROSFIELD MOVED HB 343 BE AMENDED.**

Discussion: **SEN. GROSFIELD**, referring to page 9 of the bill, stated he asked the police officer in the hearing about what that part of the bill would mean. He understood the procedure to be that the police officer had to receive a complaint from more than one person who is a family member before they could consider a determination of primary aggressor. If the original call comes from the wife and is then corroborated by a neighbor, that

neighbor is not a family member or partner and, therefore, would not trigger (b). The only time the officer is authorized to make the determination of primary aggressor is when more than one person who is a family member or a partner complains. When the neighbor is the first one who calls, the officer cannot make the determination under (b). Subsection (a) states that the summoning of a peace officer to a place of residence by a partner or family member constitutes an exigent circumstance for making an arrest and that the arrest is the preferred response. That only applies if the first call comes from a partner or family member. Section 6 deals with the basis for arrest without a warrant. That is a fairly serious issue. His amendment no. 2 would state that when a peace officer responds to a partner or family member assault . . . It doesn't matter who calls. If it appears the partners were involved in mutual aggression, the officer shall evaluate the situation and then make the determination on primary aggressor. He would like to eliminate sections 1 and 9 from the bill. They would charge anyone who wants a divorce $30. He did not think that was appropriate. He is willing to give it to them for two years and have them find another funding source. Oftentimes both parties are arrested. There is probably not a need for arresting both. That leaves the children home alone.

SEN. SUE BARTLETT was concerned about the phrase "if it appears the parties were involved in mutual aggression." Her impression is that they want clear statutory authority to make a determination on who is the primary aggressor. They often feel compelled to arrest both parties because there is no basis to make a distinction about who may have instigated and carried out the majority of the aggression.

SEN. STEVE DOHERTY commented that **SEN. GROSFIELD's** proposed amendment no. 2 could include "and the officer in the response hears from both sides and then they have to evaluate" or "and if it appears that both parties have complaints."

Ms. Lane felt that **SEN. GROSFIELD** intended his amendment to be broader than the original bill. The original bill would require that both parties complained against each other. If by the time the cops get there, the wife is insisting that she simply fell down the stairs and refuses to complain against the husband, they do not have a complaint from more than one party. They do not need to decide who was a primary aggressor unless their is mutual aggression.

Vote: The **MOTION CARRIED** on voice vote with **SEN. MIKE HALLIGAN** voting no.

Amendments: hbo34301.avl - **EXHIBIT 2**

Discussion:

Ms. Lane explained this occurred on page 9, line 14. The amendment would strike subsection (iv) which referred to when deciding who was the primary aggressor they would look at the relative sizes and apparent strength of each person.

Motion: **SEN. HALLIGAN MOVED TO FURTHER AMEND HB 343.**

Vote: The **MOTION FAILED.**

Motion: **SEN. GROSFIELD MOVED HB 343 BE CONCURRED IN AS AMENDED.**

Vote: The **MOTION CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON HB 352

{Tape: 1; Side: a; Approx. Time Count: 8:26; Comments: .}

Amendments: hb035201.avl - **EXHIBIT 3**

Motion: **SEN. DOHERTY MOVED HB 352 BE AMENDED.**

Discussion:

SEN. DOHERTY would add the word "reasonably" before unforeseeable. The language would then be "The owner is not liable for injuries or damage arising out of the use of the property while the property is possessed by another if the misuse or use was reasonably unforeseeable.

CHAIRMAN CRIPPEN asked the meaning of "reasonably unforeseeable".

SEN. DOHERTY stated that would be the standard by which the person would figure out the amount of care which is necessary to prevent negligence. If there is theft, the sponsor felt that automatically broke the causation chain. If someone is irresponsible and it was reasonably foreseeable that a certain result would occur as a result of their irresponsibility they potentially could be held liable. "Reasonably unforeseeable" would be a negligence standard. **SEN. GROSFIELD'S** amendment would be either above or below.

SEN. WALTER MCNUTT stated that if property is stolen, either amendment could cause mischief. He felt the amendments would say that it is okay to steal. Stealing is illegal.

SEN. DOHERTY explained that there is a doctrine called an attractive nuisance. The person who has a swimming pool and makes an effort to keep children out so they are not injured, is reasonable and prudent. A construction company which stores dynamite has a higher degree of responsibility to lock the area where the blasting caps are stored than he would for his guns. The construction company which stores dynamite in packages which

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3/11/97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
AL BISHOP	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN			✓
REINY JABS	✓		
WALT MC NUTT	✓		
LORENTS GROSFIELD, VICE CHAIRMAN	✓		
BRUCE CRIPPEN, CHAIRMAN	✓		

SEN:1995
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CS-09

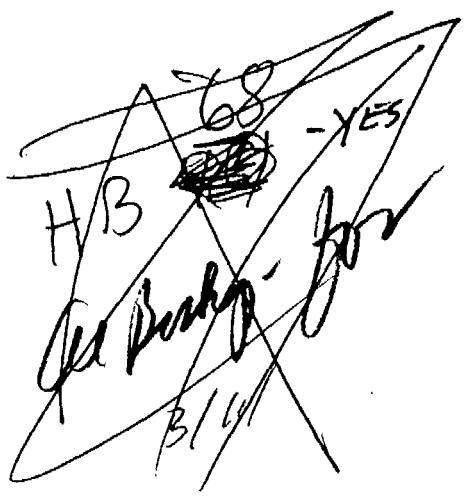
3-9-97

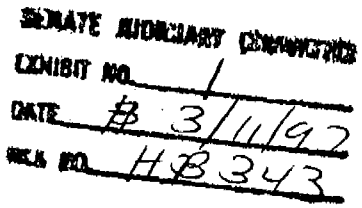
PROXY VOTES

HB 68 - McGee - YES
HB 268 - Kottel - YES but coordinate with Jernigan Bill

HB 343 - Grimes - YES with Amendment
HB 352 - Slifer - YES - YES - YES
HB 325 - Brainard - NO

Senator Lee Holden
Holden





Amendments to House Bill No. 343
Third Reading Copy (blue)

Requested by Senator Grosfield
For the Committee on Judiciary

Prepared by Valencia Lane
March 10, 1997

1. Title, line 16.
Following: first "DATE"
Strike: "AND"
Insert: ","
Following: second "DATE"
Insert: ", AND A TERMINATION DATE"

2. Page 9, lines 4 and 5.
Following: "(b)" on line 4
Strike: remainder of line 4 through "separately" on line 5
Insert: "When a peace officer responds to a partner or family member assault complaint and if it appears that the parties were involved in mutual aggression, the officer shall evaluate the situation"

3. Page 11.
Following: line 15
Insert: "NEW SECTION. **Section 14. Termination.** [Sections 1 and 9 terminate June 30, 1999."

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 3/11/97
HB. NO. HB343

Amendments to House Bill No. 343
Third Reading Copy (blue)

Requested by Senator Holden
For the Committee on Judiciary

Prepared by Valencia Lane
March 10, 1997

1. Page 9, line 14.
Strike: subsection (iv) in its entirety
Renumber: subsequent subsections

SENATE STANDING COMMITTEE REPORT

March 11, 1997

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill 343 (third reading copy -- blue), respectfully report that House Bill 343 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 16.
Following: first "DATE"
Strike: "AND"
Insert: ","
Following: second "DATE"
Insert: ", AND A TERMINATION DATE"

2. Page 9, lines 4 and 5.
Following: "(b)" on line 4
Strike: remainder of line 4 through "separately" on line 5
Insert: "When a peace officer responds to a partner or family member assault complaint and if it appears that the parties were involved in mutual aggression, the officer shall evaluate the situation"

3. Page 11.
Following: line 15
Insert: "NEW SECTION. **Section 14. Termination.** [Sections 1 and 9 terminate June 30, 1999."

-END-

Amd. Coord.
Sec. of Senate

Nelson
Senator Carrying Bill

531410SC.STS

2nd Reading

with more than 500 but fewer than 1,000 service connectors, subject to the following conditions:

(a) the facility had more than 500 but fewer than 1,000 subscribers during the entire year before the letting of the project contract; and

(b) the relocation is the result of state highway or federal-aid highway system construction."

Amendment adopted unanimously.

Senator Holden moved HB 320, as amended, be concurred in. Motion carried unanimously.

HB 343 - Senator Nelson moved HB 343 be concurred in. Motion carried as follows:

Yeas: Bartlett, Brooke, Burnett, Christiaens, Cole, Crippen, DePratu, Doherty, Eck, Emerson, Foster, Franklin, Gage, Glaser, Grosfield, Halligan, Holden, Jabs, Jenkins, Jergeson, Keating, McNutt, Miller, Nelson, Shea, Stang, Toews, Van Valkenburg, Waterman, Wilson.
Total 30

Nays: Baer, Beck, Benedict, Bishop, Crismore, Devlin, Estrada, Hargrove, Harp, Hertel, Lynch, Mahlum, Mesaros, Mohl, Sprague, Swysgood, Taylor, Thomas, Mr. President.
Total 19

Absent or not voting: None.
Total 0

Excused: McCarthy.
Total 1

Senator Harp moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Aklestad in the Chair. Chairman Crismore moved that the Committee of the Whole report be adopted. Report adopted.

Senators Jergeson, Lynch and Bartlett excused at this time.

SPECIAL ORDERS OF THE DAY

SR 9 - Senator Hargrove moved that SR 9, confirming the nomination of Mr. Patrick Graham as Director of the Department of Fish, Wildlife, and Parks, be adopted and that the ayes and nays be spread upon the journal. Motion carried as follows:

Yeas: Baer, Bartlett, Beck, Benedict, Bishop, Brooke, Christiaens, Cole, Crippen, Crismore, DePratu, Devlin, Doherty, Eck, Estrada, Foster, Franklin, Gage, Glaser, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jergeson, Keating, Lynch, Mahlum, McNutt, Miller, Mohl, Nelson, Shea, Sprague, Stang, Swysgood, Taylor, Thomas, Van Valkenburg, Waterman, Wilson, Mr. President.
Total 44

Nays: Burnett, Emerson, Jenkins, Mesaros, Toews.
Total 5

Devlin, Doherty, Eck, Emerson, Estrada, Foster, Franklin, Gage, Glaser, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Keating, Lynch, Mahlum, McNutt, Mesaros, Miller, Mohl, Nelson, Shea, Stang, Swysgood, Taylor, Thomas, Toews, Van Valkenburg, Waterman, Wilson, Mr. President.
Total 47

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Jergeson, McCarthy, Sprague.
Total 3

HB 331, as amended, concurred in as follows:

Yeas: Baer, Bartlett, Beck, Benedict, Bishop, Brooke, Burnett, Christiaens, Cole, Crippen, Crismore, DePratu, Doherty, Eck, Emerson, Foster, Franklin, Gage, Glaser, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Keating, Lynch, Mahlum, McNutt, Mesaros, Miller, Nelson, Shea, Sprague, Stang, Thomas, Toews, Van Valkenburg, Waterman, Wilson, Mr. President.
Total 42

Nays: Devlin, Estrada, Jenkins, Mohl, Swysgood, Taylor.
Total 6

Paired: Sprague, Aye; Devlin, No.

Absent or not voting: None.
Total 0

Excused: Jergeson, McCarthy.
Total 2

HB 343, as amended, concurred in as follows:

Yeas: Bartlett, Brooke, Burnett, Christiaens, Cole, Crippen, Doherty, Eck, Emerson, Foster, Franklin, Gage, Glaser, Grosfield, Halligan, Holden, Jabs, Jergeson, McCarthy, McNutt, Miller, Nelson, Shea, Stang, Toews, Van Valkenburg, Waterman, Wilson.
Total 28

Nays: Baer, Beck, Benedict, Bishop, Crismore, DePratu, Devlin, Estrada, Hargrove, Harp, Hertel, Jenkins, Keating, Lynch, Mahlum, Mesaros, Mohl, Sprague, Swysgood, Taylor, Thomas, Mr. President.
Total 22

Paired: Cole, Jergeson, McCarthy, Aye; Benedict, Devlin, Sprague, No.

Absent or not voting: None.
Total 0

Excused: None.
Total 0

HB 348 concurred in as follows:

Yeas: Baer, Beck, Benedict, Bishop, Brooke, Christiaens, Cole, Crippen, Crismore, DePratu, Devlin, Doherty, Eck, Emerson, Foster, Franklin, Gage, Glaser, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Keating, Lynch, Mahlum, McNutt, Mesaros, Miller, Mohl, Nelson, Shea, Stang, Swysgood, Taylor, Thomas, Toews, Van Valkenburg, Waterman, Wilson, Mr. President.
Total 44

Nays: Bartlett, Burnett, Estrada.
Total 3

Absent or not voting: None.
Total 0

Excused: Jergeson, McCarthy, Sprague.
Total 3

HB 376, as amended, concurred in as follows:

Yeas: Baer, Bartlett, Beck, Benedict, Bishop, Brooke, Christiaens, Cole, Crippen, Crismore, Devlin, Doherty, Eck, Emerson, Estrada, Foster, Franklin, Gage, Glaser, Grosfield, Halligan, Hargrove, Hertel, Holden, Jabs, Jenkins, Keating, Lynch, Mahlum, Mesaros, Miller, Nelson, Shea, Stang, Swysgood, Thomas, Toews, Van Valkenburg, Waterman, Wilson, Mr. President.
Total 41

Nays: Burnett, DePratu, Harp, McNutt, Mohl, Taylor.
Total 6

Absent or not voting: None.
Total 0

Excused: Jergeson, McCarthy, Sprague.
Total 3

HB 422, as amended, concurred in as follows:

Yeas: Baer, Bartlett, Beck, Benedict, Bishop, Brooke, Burnett, Christiaens, Cole, Crippen, Crismore, DePratu, Devlin, Doherty, Eck, Emerson, Estrada, Foster, Franklin, Gage, Glaser, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jenkins, Keating, Lynch, Mahlum, McNutt, Mesaros, Miller, Mohl, Nelson, Shea, Stang, Swysgood, Taylor, Thomas, Toews, Van Valkenburg, Waterman, Wilson, Mr. President.
Total 47

Nays: None.
Total 0

Representative Carey withdrew his previous motion.

Representative Carey moved Senate amendments to HB 339 be not concurred in. Motion carried as follows:

Ayes: Adams, Ahner, Arnott, Bankhead, Barnett, Barnhart, Beaudry, Bergman, Bergsagel, Bitney, Boharski, Bohlinger, Bookout, Brainard, Carey, Clark, Cobb, Curtiss, DeBruycker, Denny, Devaney, Ellingson, Ellis, Feland, Galvin, Gillan, Grady, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Hayne, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Jore, Kasten, Keenan, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McCann, McCulloch, McGee, Menahan, Mills, Molnar, Mood, Ohs, Orr, Pavlovich, Pease, Peck, Prouse, Quilici, Raney, Rose, Sands, Schmidt, Simon, Simpkins, Simpson, Sliter, Smith, Soft, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Vick, Wagner, Walters, Wells, Whitehead, Wiseman, Wyatt, Zook, Mr. Speaker.
Total 90

Noes: Anderson, Cocchiarella, Dowell, Ewer, Harrington, Heavy Runner, Ream, Rehbein, Ryan, Tuss.
Total 10

Excused: None.
Total 0

Absent or not voting: None.
Total 0

HB 343 - Representative Grimes moved Senate amendments to HB 343 be concurred in. Motion carried as follows:

Ayes: Adams, Ahner, Anderson, Arnott, Bankhead, Barnett, Barnhart, Beaudry, Bergman, Bergsagel, Bitney, Boharski, Bohlinger, Brainard, Carey, Clark, Cobb, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Dowell, Ellingson, Ellis, Ewer, Feland, Galvin, Gillan, Grady, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Jore, Kasten, Keenan, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McCann, McCulloch, McGee, Menahan, Mills, Molnar, Mood, Ohs, Orr, Pavlovich, Pease, Peck, Prouse, Quilici, Raney, Ream, Rehbein, Rose, Ryan, Sands, Schmidt, Simon, Simpkins, Simpson, Sliter, Smith, Soft, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Vick, Wagner, Walters, Wells, Whitehead, Wiseman, Wyatt, Zook, Mr. Speaker.
Total 99

Noes: Bookout.
Total 1

Excused: None.
Total 0

Absent or not voting: None.
Total 0

HB 344 - Representative Peck moved Senate amendments to HB 344 be concurred in. Motion carried as follows:

Ayes: Ahner, Anderson, Arnott, Bankhead, Barnett, Barnhart, Bergman, Bergsagel, Bitney, Bohlinger, Bookout, Carey, Clark, Cobb, DeBruycker, Devaney, Dowell, Ellingson, Ellis, Ewer, Feland, Galvin, Gillan, Grady,

3rd Reading

Cocchiarella, Denny, Dowell, Ellingson, Ellis, Ewer, Galvin, Gillan, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Heavy Runner, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Kitzenberg, Kottel, Krenzler, Lawson, Marshall, Masolo, McCann, McCulloch, McGee, Menahan, Mills, Mood, Ohs, Pavlovich, Pease, Peck, Quilici, Raney, Ream, Rose, Ryan, Sands, Schmidt, Simon, Simpson, Soft, Squires, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Whitehead, Wiseman, Wyatt, Zook, Mr. Speaker.
Total 69

Noes: Adams, Arnott, Bankhead, Bergman, Bitney, Boharski, Brainard, Curtiss, DeBruycker, Devaney, Feland, Grinde, Hayne, Jore, Kasten, Keenan, Knox, Molnar, Prouse, Rehbein, Sliter, Story, Vick, Wagner, Walters, Wells.
Total 26

Voted Absentee: Kottel, Sands, Ayes.

Excused: Grimes, Orr, Simpkins.
Total 3

Absent or not voting: Grady, Smith.
Total 2

HB 337 - as amended by the Senate, concurred in as follows:

Ayes: Adams, Ahner, Anderson, Arnott, Bankhead, Barnett, Barnhart, Beaudry, Bergman, Bergsagel, Bitney, Boharski, Bohlinger, Bookout, Brainard, Carey, Clark, Cobb, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Dowell, Ellingson, Ellis, Ewer, Feland, Galvin, Gillan, Grady, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Jore, Kasten, Keenan, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McCann, McCulloch, McGee, Menahan, Mills, Molnar, Mood, Ohs, Pavlovich, Pease, Peck, Prouse, Quilici, Raney, Ream, Rehbein, Rose, Ryan, Sands, Schmidt, Simon, Simpson, Sliter, Smith, Soft, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Vick, Wagner, Walters, Wells, Whitehead, Wiseman, Wyatt, Zook, Mr. Speaker.
Total 97

Noes: None.
Total 0

Voted Absentee: Kottel, Sands, Ayes.

Excused: Grimes, Orr, Simpkins.
Total 3

Absent or not voting: None.
Total 0

HB 343 - as amended by the Senate, concurred in as follows:

Ayes: Ahner, Anderson, Barnhart, Beaudry, Bergman, Bergsagel, Bitney, Bohlinger, Bookout, Carey, Clark, Cobb, Cocchiarella, Curtiss, Denny, Devaney, Dowell, Ellingson, Ellis, Ewer, Feland, Galvin, Gillan, Grady, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Hibbard, Holland, Hurdle, J.

Johnson, R. Johnson, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McCann, McCulloch, Menahan, Mills, Mood, Ohs, Pavlovich, Pease, Peck, Quilici, Raney, Ream, Rose, Ryan, Sands, Schmidt, Simon, Simpson, Sliter, Soft, Squires, Stovall, Swanson, Tash, Taylor, Tropila, Tuss, Walters, Whitehead, Wiseman, Wyatt, Zook, Mr. Speaker.
Total 77

Noes: Adams, Arnott, Bankhead, Barnett, Boharski, Brainard, DeBruycker, Jore, Kasten, Keenan, McGee, Prouse, Rehbein, Smith, Story, Trexler, Vick, Wagner, Wells.
Total 19

Voted Absentee: Kottel, Sands, Ayes.

Excused: Grimes, Orr, Simpkins.
Total 3

Absent or not voting: Molnar.
Total 1

HB 344 - as amended by the Senate, concurred in as follows:

Ayes: Adams, Ahner, Anderson, Arnott, Bankhead, Barnett, Barnhart, Beaudry, Bergman, Bergsagel, Bitney, Boharski, Bohlinger, Bookout, Brainard, Carey, Clark, Cobb, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Dowell, Ellingson, Ellis, Ewer, Feland, Galvin, Grady, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Jore, Kasten, Keenan, Kitzenberg, Knox, Kottel, Krenzler, Lawson, Marshall, Masolo, McCann, McCulloch, McGee, Menahan, Mills, Molnar, Mood, Ohs, Pavlovich, Pease, Peck, Prouse, Quilici, Raney, Ream, Rehbein, Rose, Ryan, Sands, Schmidt, Simon, Simpson, Sliter, Smith, Soft, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Vick, Wagner, Walters, Wells, Whitehead, Wiseman, Wyatt, Zook, Mr. Speaker.
Total 96

Noes: None.
Total 0

Voted Absentee: Kottel, Sands, Ayes.

Excused: Grimes, Orr, Simpkins.
Total 3

Absent or not voting: Gillan.
Total 1

HB 345 - as amended by the Senate, not concurred in as follows:

Ayes: Adams, Ahner, Anderson, Bankhead, Barnett, Beaudry, Bergman, Bitney, Boharski, Bohlinger, Bookout, Clark, Cobb, DeBruycker, Ellis, Grady, Grimes, H.S. Hanson, M. Hanson, Hayne, Hibbard, Holland, R. Johnson, Kasten, Kitzenberg, Knox, Lawson, Marshall, Masolo, McGee, Mood, Ohs, Rehbein, Rose, Simon, Simpkins, Sliter, Soft, Stovall, Tash, Taylor, Walters, Wiseman, Zook, Mr. Speaker.
Total 45

HOUSE BILL NO. 343

INTRODUCED BY GRIMES, NELSON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO DOMESTIC VIOLENCE; ~~ELIMINATING FILING FEES FOR ORDERS OF PROTECTION;~~ INCREASING CERTAIN FILING FEES ~~TO OFFSET THE ELIMINATION OF FEES~~; CREATING AN ACCOUNT TO HELP FUND DOMESTIC VIOLENCE SHELTERS AND CRISIS LINES; PROVIDING THAT IN PARTNER OR FAMILY MEMBER ASSAULT SITUATIONS A PEACE OFFICER MAY ARREST THE PRIMARY AGGRESSOR; PROVIDING THAT IN ANY ASSAULT AGAINST A PARTNER OR FAMILY MEMBER AN OFFENDER MUST GO TO JAIL WITHOUT BAIL; PROVIDING THAT IN A HEARING FOR AN ORDER OF PROTECTION THE VICTIM'S PAST SEXUAL HISTORY MAY NOT BE PLACED INTO EVIDENCE; PROVIDING A PRIVILEGE FOR A VICTIM OF PARTNER OR FAMILY MEMBER ASSAULT FROM DISCLOSURE OF DISCUSSIONS WITH SHELTER WORKERS AND VOLUNTEERS; CLARIFYING THAT A CONVICTION UNDER THE FORMER DOMESTIC ABUSE STATUTE IS A CONVICTION UNDER THE CURRENT PARTNER OR FAMILY MEMBER ASSAULT STATUTE; AMENDING SECTIONS 25-1-201, ~~25-31-112, 40-15-201,~~ 40-15-202, 40-15-302, 45-5-206, 46-6-311, AND 46-9-302, MCA; AND PROVIDING AN EFFECTIVE DATE ~~AND~~, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-1-201, MCA, is amended to read:

"**25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage~~, for a temporary order of protection, or for an order of protection~~, from the plaintiff or petitioner, $80; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, a fee of ~~$120~~ $150; and for filing a petition for legal separation, a fee of ~~$120~~ $150;

(b) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five

pages of each file, per request, and 25 cents per additional page;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100.

(2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $14 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the fee for filing a petition for dissolution of marriage or legal separation, $40 must be deposited in the state general fund, $35 must be remitted to the state to be deposited as provided in 19-5-404, $5 must be deposited in the children's trust fund account established by 41-3-702, $30 must be deposited in the partner and family member assault intervention and treatment fund established by [section ~~11~~ 9], and $20 must be deposited in and credited to the district court fund. If no district court fund

exists, the $20 must be deposited in the general fund for district court operations.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), $35;

(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), $25;

(iii) on the entry of judgment as provided in subsection (1)(c), $15; and

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be remitted to the state to be deposited as provided in 19-5-404.

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund $20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries.

~~(9) There is no fee for filing a petition for a temporary order of protection or for an order of protection under Title 40, chapter 15.~~"

~~**Section 2. Section 25-31-112, MCA, is amended to read:**~~

~~"25-31-112. Fees.~~ ~~(1)~~ ~~The following is the schedule of fees which that, except as provided in 25-35-605, shall must be paid in every civil action in a justice's court:~~

~~(1)(a) $25 except as provided in subsection (2), $26 when complaint is filed, to be paid by the plaintiff;~~

~~(2)(b) $10 when the defendant appears, to be paid by the defendant;~~

~~(3)(c) $10 to be paid by the prevailing party when judgment is rendered. In cases where in which judgment is entered by default, no charge except the $25 for the filing of the complaint shall must be made for any services, including issuing and return of execution.~~

~~(4)(d) $10 for all services in an action where in which judgment is rendered by confession;~~

~~(5)(e) $10 for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate.~~

~~(2) There is no fee for filing a petition for a temporary order of protection or for an order of protection under Title 40, chapter 15."~~

NEW SECTION. **Section 2. Temporary order or temporary injunction -- continuing effect.** A temporary order or temporary injunction issued under 40-4-121 before October 1, 1995, continues in full force and effect as provided in the order or injunction.

~~**Section 4.** Section 40-15-201, MCA, is amended to read:~~

~~**"40-15-201. Temporary order of protection.** (1) A petitioner may seek a temporary order of protection from a court listed in 40-15-201. The petitioner shall file a sworn petition that states that the petitioner is in reasonable apprehension of bodily injury or is a victim of one of the offenses listed in 40-15-102, has a relationship to the respondent if required by 40-15-102, and is in danger of harm if the court does not issue a temporary order of protection immediately.~~

~~(2) Upon a review of the petition and a finding that the petitioner is in danger of harm if the court does not act immediately, the court shall issue a temporary order of protection that grants the petitioner appropriate relief. The temporary order of protection may include any or all of the following orders:~~

~~(a) prohibiting the respondent from threatening to commit or committing acts of violence against the petitioner and any designated family member;~~

~~(b) prohibiting the respondent from harassing, annoying, disturbing the peace of, telephoning, contacting, or otherwise communicating, directly or indirectly, with the petitioner, any named family member, any other victim of the offense, or a witness to the offense;~~

~~(c) prohibiting the respondent from removing a child from the jurisdiction of the court;~~

~~(d) directing the respondent to stay 1,500 feet or other appropriate distance away from the petitioner, the petitioner's residence, the school or place of employment of the petitioner, or any specified~~

~~place frequented by the petitioner and by any other designated family or household member;~~

~~(e) removing and excluding the respondent from the residence of the petitioner, regardless of ownership of the residence;~~

~~(f) prohibiting the respondent from possessing or using the firearm used in the assault;~~

~~(g) prohibiting the respondent from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring the respondent to notify the petitioner, through the court, of any proposed extraordinary expenditures made after the order is issued;~~

~~(h) directing the transfer of possession and use of the residence, an automobile, and other essential personal property, regardless of ownership of the residence, automobile, or essential personal property, and directing an appropriate law enforcement officer to accompany the petitioner to the residence to ensure that the petitioner safely obtains possession of the residence, automobile, or other essential personal property or to supervise the petitioner's or respondent's removal of essential personal property;~~

~~(i) directing the respondent to complete violence counseling, which may include alcohol or chemical dependency counseling or treatment, if appropriate;~~

~~(j) directing other relief considered necessary to provide for the safety and welfare of the petitioner or other designated family member.~~

~~(3) If the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld, except by order of the court for good cause shown.~~

~~(4) The court may, without requiring prior notice to the respondent, issue an immediate temporary order of protection for up to 20 days if the court finds, on the basis of the petitioner's sworn petition or other evidence, that harm may result to the petitioner if an order is not issued before the 20-day period for responding has elapsed.~~

~~(5) There is no fee for filing a petition for a temporary order of protection or for an order of protection.~~"

Section 3. Section 40-15-202, MCA, is amended to read:

"**40-15-202. Order of protection -- hearing -- evidence.** (1) A hearing must be conducted within 20 days from the date the court issues a temporary order of protection. At the hearing, the court shall determine whether good cause exists for the temporary order of protection to be continued, amended, or

made permanent.

(2) The respondent may request an emergency hearing before the end of the 20-day period by filing an affidavit that demonstrates that the respondent has an urgent need for the emergency hearing. An emergency hearing must be set within 3 working days of the filing of the affidavit.

(3) The order of protection may not be made mutually effective by the court. The respondent may obtain an order of protection from the petitioner only by filing an application for an order of protection and following the procedure described in this chapter.

(4) (a) Except as provided in subsection (4)(b), evidence concerning a victim's sexual conduct is not admissible in a hearing under this section.

(b) Evidence of a victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease may be admitted in a hearing under this section only if that sexual conduct is at issue in the hearing.

(5) If a respondent proposes to offer evidence subject to subsection (4)(b), the trial judge shall order a separate hearing to determine whether the proposed evidence is admissible under subsection (4)(b)."

Section 4. Section 40-15-302, MCA, is amended to read:

"**40-15-302. Appeal to district court -- order to remain in effect.** (1) An order issued by a justice's court, municipal court, or city court pursuant to 40-15-201 is immediately reviewable by the district judge upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a justice's court, municipal court, or city court made pursuant to 40-15-201 or 40-15-204.

(2) A case in which an order has been issued by a justice's court, municipal court, or city court pursuant to 40-15-201 or 40-15-204 may be removed to district court upon filing of a notice of removal.

(3) If a temporary order of protection or an order of protection issued by a court of limited jurisdiction is appealed or removed to an appellate court, the order continues in full force and effect unless modified by the appellate court."

Section 5. Section 45-5-206, MCA, is amended to read:

"**45-5-206. Partner or family member assault -- penalty.** (1) A person commits the offense of partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a partner or family member;

(b) negligently causes bodily injury to a partner or family member with a weapon; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

(2) For the purposes of Title 40, chapter 15, 46-6-311, and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) (a) An offender convicted of partner or family member assault shall be fined an amount not less than $100 or more than $1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense. An offender convicted of a second offense under this section shall be fined not less than $300 or more than $1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year. Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005. On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than $500 and not more than $50,000 and be imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(b) For the purpose of determining the number of convictions under this section, a conviction means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated. A prior conviction for domestic abuse under this section is a prior conviction for purposes of subsection (3)(a).

(4) (a) An offender convicted of partner or family member assault ~~shall~~ must be required to pay for and complete a counseling assessment with a focus on violence, dangerousness, and chemical dependency. The offender shall follow through on all recommendations made by the counseling provider. The ~~counselor~~ counseling provider must be approved by the court. The counseling must include a counseling assessment and a minimum of 25 hours of counseling, in addition to the assessment. The assessment and the counseling must be:

(i) with a person licensed under Title 37, chapter 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent conduct of the offender.

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender ~~shall~~ must be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) At the time of sentencing, the court shall provide an offender a written copy of the offender's sentence."

Section 6. Section 46-6-311, MCA, is amended to read:

"**46-6-311. Basis for arrest without warrant -- arrest of primary aggressor.** (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) (a) The summoning of a peace officer to a place of residence by a partner or family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.

(b) ~~If a peace officer receives a complaint of violence or threat of violence from more than one person who is a family member or partner, the officer shall evaluate the complaints separately~~ WHEN A PEACE OFFICER RESPONDS TO A PARTNER OR FAMILY MEMBER ASSAULT COMPLAINT AND IF IT APPEARS THAT THE PARTIES WERE INVOLVED IN MUTUAL AGGRESSION, THE OFFICER SHALL EVALUATE THE SITUATION to determine who is the primary aggressor. If, based on the officer's evaluation, the officer determines that one person is the primary aggressor, the officer may arrest only the primary aggressor. A determination of who the primary aggressor is must be based on but is not limited to the following considerations, regardless of who was the first aggressor:

(i) the prior history of violence between the partners or family members, if information about the prior history is available to the officer;

(ii) the relative severity of injuries received by each person;

(iii) whether an act of or threat of violence was taken in self-defense;

(iv) the relative sizes and apparent strength of each person;

(v) the apparent fear or lack of fear between the partners or family members; and

(vi) statements made by witnesses."

Section 7. Section 46-9-302, MCA, is amended to read:

"**46-9-302. Bail schedule -- acceptance by peace officer.** (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is any assault on a partner or family member ~~assault~~, as partner or family member is defined in 45-5-206, or stalking, as defined in 45-5-220.

(2) A peace officer may accept bail on behalf of a judge:

(a) in accordance with the bail schedule established under subsection (1); or

(b) whenever the warrant of arrest specifies the amount of bail.

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the

offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered."

NEW SECTION. **Section 8. Advocate privilege.** (1) Unless a report is otherwise required by law, an advocate may not, without consent of the victim, be examined as to any communication made to the advocate by a victim and may not divulge records kept during the course of providing shelter, counseling, or crisis intervention services.

(2) This privilege belongs to the victim and may not be waived, except by express consent. The privilege continues even if the victim is unreachable. Consent may not be implied because the victim is a party to a divorce or custody proceeding. The privilege terminates upon the death of the victim.

(3) For purposes of this section, the following definitions apply:

(a) "Advocate" means an employee or volunteer of a domestic violence shelter, crisis line, or victim's services provider that provides services for victims of sexual assault, stalking, or any assault on a partner or family member.

(b) "Victim" means a person seeking assistance because of partner or family member assault, any sexual assault, or stalking, whether or not the victim seeks or receives services within the criminal justice system.

NEW SECTION. **Section 9. Partner and family member assault intervention and treatment fund account.** (1) There is a partner and family member assault intervention and treatment fund account in the state special revenue fund in the state treasury. The money in the account is allocated to the department of public health and human services to fund services to victims of partner or family member assault, as provided in subsections (2) and (3).

(2) The department shall distribute the money in the account, as provided in subsection (3), to agencies that provide direct services to victims of partner or family member assault, including but not limited to shelters, crisis lines, safe homes, and victim's counseling providers. A service provider is eligible to receive money under this section for services provided to a victim of partner or family member assault, whether or not the victim seeks or receives services within the criminal justice system.

(3) A service provider that provides direct services to victims of partner or family member assault shall apply to the department for distribution of money under this section. The department shall evaluate a provider's eligibility to receive money under this section based on available money, the needs of the

provider, whether the provider includes programs focused on prevention of partner and family member assault, the quality of services provided by the provider, the need for services in the community, and the need for improved or continuing services in the community.

NEW SECTION. **Section 10. Codification instruction.** (1) [Section ~~10~~ 8] is intended to be codified as an integral part of Title 26, chapter 1, part 8, and the provisions of Title 26, chapter 1, part 8, apply to [section ~~10~~ 8].

(2) [Section ~~11~~ 9] is intended to be codified as an integral part of Title 40, chapter 15, part 1, and the provisions of Title 40, chapter 15, part 1, apply to [section ~~11~~ 9].

NEW SECTION. **Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 12. Retroactive applicability.** [Section ~~3~~ 2] applies retroactively to October 1, 1995.

NEW SECTION. **Section 13. Effective date.** [This act] is effective July 1, 1997.

NEW SECTION. **SECTION 14. TERMINATION.** [SECTIONS 1 AND 9] TERMINATE JUNE 30, 1999.

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